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

% Judgment Pronounced on: 24.03.2021

\+ W.P.(C) 11079/2019, CM Nos.45672-673/2019 & 48686-687/2019

BARI BHATI AND CHHOTI BHATI RESIDENT WELFARE ASSOCIATION AND ORS ..... Petitioners

Through: Mr.Ravi Gupta, Sr. Adv. with Mr.Pankaj Vivek and Ms.Bidyarani, Advocates

versus

GOVT OF NCT OF DELHI AND ORS ..... Respondents

Through: Mr.Gautam Narayan, ASC with Ms.Shivani Vij and Ms.Dacchita Shahi, Advocates

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This writ petition is filed seeking the following relief:-

"a) Call for the records from the respondents w.r.t. Extended Lal Dora Abadi of Village Bhati, Tehsil Saket, Distt. South, New Delhi as depicted in the layout plan filed by the petitioner no. 1 with the application for regularization dated 20.08.2013 bearing no.181/ALD/UD (Annexure P-l);

b) Issue a writ, order or direction in the nature of mandamus or any other or similar writ or direction thereby commanding the respondents to maintain status quo as existing on 01.06.2014 in respect of the Extended Lai Dora Abadi of Village Bhati, Tehsil Saket, Distt. South, New Delhi as depicted in the layout plan filed by the petitioner no. 1 with the application for regularization dated 20.08.2013 bearing no.181/ALD/UD in accordance with the provisions of The National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 (as amended upto date);

c) Issue a writ, order or direction in the nature of mandamus or any other or similar writ or direction thereby commanding the respondents to settle the rights of the petitioners as "other traditional forest dwellers" in accordance with The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (No. 2 of 2007); and

d) Issue a writ, order or direction in the nature of certiorari or any other or similar writ or direction thereby quashing the notice/order dated 19.05.2018 (bearing F.No.SDM(Saket)/GS/Forest/ 2018/ 1954) issued by the respondent no. 4 in relation to Extended Lai Dora Abadi of Village Bhati, Tehsil Saket, Distt. South, New Delhi as depicted in the layout plan filed by the petitioner no. 1 with the application for regularization dated 20.08.2013 bearing no.181/ALD/UD."

2. It is the case of the petitioners that the occupants of Extended *Lal Dora Abadi* of Village Bhati are all original inhabitants who have descended from a common ancestor. The village Bhati was allegedly settled by one Sh.Garib Ram in 1620 AD. The inhabitants of the village Bhati are of Gurjar tribe which is a traditional herder community engaged in cow-herding and sheep rearing. Only a small portion of the land of village Bhati was cultivated to grow grain for sale/consumption. The economy of the village was primarily dependent upon forest produce as cattle and sheep were dependent upon forest produce. Since time immemorial, the lands of revenue estate of village Bhati were recorded in the name of Shamilat Deh (i.e. a body comprising of the proprietors of the Village). Most of the land was used for pasture and grazing as it was hilly land consisting of shrubs and small trees. It is stated that after the Delhi Land Reforms Act, 1954 was enacted, the Shamilat lands vested in the Gaon Sabha

and the cultivated lands were declared as Bhumidhari of the tillers/villagers. This village is the last village situated on the border of Delhi adjacent to the Asola Wildlife Sanctuary and it continues to have the status of a forest village.

3. It is stated that over years population of inhabitants of village Bhati multiplied. Therefore, there was no alternative for the villagers but to build their houses on the common lands situated adjoining to the Old Lal Dora Abadi. It is claimed that this was a natural organic growth of village abadi and the residents of village *abadi* only consisted of the original inhabitants of the village. It is claimed that Extended Lal Dora Abadi of the village Bhati is under process of regularisation as it is to be treated as natural extension of village abadi.

4. It is also claimed that village Bhati is a unique village in Delhi which is situated in a forested area of Aravali hills and all villagers enjoy the status of "Other Traditional Forest Dwellers" as defined in The Schedule Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The petitioners and other villagers have a right to reside in the forest area and to utilize the forest produce, which is protected by law. It is stated that ignoring ground realities, documents were prepared by the respondents showing that the aforesaid land was handed over to the Forest Department, GNCTD pursuant to the Gazette Notification dated 02.04.1996. It is stated that factually the Forest Department took over possession of vacant Gaon Sabha lands for purpose of forestation and erected barbed wire fences for boundary walls leaving intact the abovesaid abadi lands possessed by the petitioners/villagers. It is reiterated that the petitioners are descendants of the settlers of the village and therefore, have a natural right over the common land and resources of their village.

5. It is claimed that after 25.01.1990, two developments took place which have brought the bulldozers to the doors of the petitioners houses. First one relates to the handing over of the common lands i.e. Gaon Sabha lands to Forest Department and the second relates to the process of demolition and dispossession of village abadi/Extended abadi situated beyond Old Lal Dora on the ground of being situated on land recorded in the name of Gaon Sabha, which stood transferred to the Forest Department. It is claimed that the respondent State utterly failed in its constitutional duties of providing for *bonafide* needs of the residents of the village and rather encroached upon their rights.

6. On 24.05.1994 a notification was issued under section 4 of the Indian Forest Act, 1927 whereby it was proposed that all forest lands and waste lands which is the property of the Government be reserved as a "reserved forest". It is the case of the petitioners that the boundaries mentioned in the notification shows that the villages of Bhati and Dera Mandi were not included in the 'reserved forest' as the aforesaid boundaries leave wide gaps particularly in respect of villages, Bhati and Dera Mandi. Therefore, the petitioners had no means of knowing that the villages of Bhati and Dera Mandi were included in the boundaries of Southern Ridge. Without prejudice, it is, in any case, stated that under section 4 of the Indian Forest Act issuing of notification constitutes the first step of the process and it only indicates the governments intention to declare certain area as 'reserved forest'. It needs to be necessarily followed up by a notification under section 6 of the Indian Forest Act for inviting claims of the persons likely to be affected. No notification under section 6 of the Indian Forest Act has been issued by respondent No.1. There is no declaration declaring

the areas as ‘reserved forest’ under section 20 of the Indian Forest Act. On 02.04.1996, the handing over of surplus Gaon Sabha land to the Forest Department, GNCTD for afforestation was notified but ownership did not get transferred to the Forest Department as till date the respondents have not started the process of reservation of the Gaon Sabha land as a ‘reserved forest’.

7. Further it is pleaded that in the year 2006, The Schedule Tribes & Other Traditional Forest Dwellers(Recognition of Forest Rights) Act, 2006 was notified and it came to apply in respect of lands situated in village Bhati and Dera Mandi. The petitioners/villagers were entitled to be recognized as “Other Traditional Forest Dwellers” and entitled to recognition, restoration and vesting of forest rights in them.

8. It is further pleaded that on account of massive unauthorised structure being built in violation of Building Bye-laws on 05.10.2007 the Municipal Corporation of Delhi issued revised guidelines for regularisation of unauthorised colonies in Delhi which provided for regularisation of the unauthorised colonies and village abadis existing on private land as well as government land. Hence, it is stated that houses/constructions which have come up on public land in the *abadis* of villages or unauthorised colonies will not be demolished and the land cost will be recovered and credited to the account of the land owning agency. Reference is made to the Delhi Laws (Special Provisions) Act, 2006 and subsequent statutory provisions.

9. It is further pleaded that the respondents have not even taken recourse to due process of law to evict the petitioners but have formed a Special Task Force to co-ordinate the efforts to recover the forest land. The STF cannot arrogate to

itself the power of civil /revenue courts/forest settlement officer and summarily order for eviction/demolition or dispossession by issuing a public notice. It is stressed that the proposed action of demolition of Extended Lal Dora Abadi of village Bhati in a summary manner is not in accordance with the due process of law as the villagers are in settled peaceful possession for a very long time of more than 50 years and have been duly so recorded in revenue records.

10. I may note that when this matter came up for hearing on 18.10.2019, a statement was made by learned counsel for the respondents that for the time being, no demolition is planned for the Abadi of village Bhati. On 18.11.2019, this court had directed that *status quo* will be maintained till the next date of hearing.

11. Respondent No.4/SDM, Saket has filed an application being CM No. 48686/2019 to take on record that, action for removal of encroachment on forest land in the stated khasra numbers of village Dera Mandi shall be undertaken by the respondents on 11.11.2019. Learned counsel for the respondent pleaded that the submissions in the said application be treated as their counter affidavit to this writ petition.

12. In the said application, it has been stated that the issue of removal of encroachments in respect of both of areas in question have been actively supervised and monitored by the National Green Tribunal in ***Amarjit Singh Nalwa v. GNCTD & Ors.***, OA.No.13/2015 and ***Sonya Ghosh v. GNCTD & Ors.***, OA.No.58/2013.

13. It is further stated that the Supreme Court in the matter of ***M.C.Mehta v. Union of India***, W.P.(C) 4677/1985 had passed detailed orders on 25.01.1996

and 13.03.1996 stressing upon the need to protect the ridge area and that the lands in question form part of a forest and cannot be utilized in any manner in view of the prohibitions contained in the Forest Conservation Act, 1980. In the light of the said facts, the Lt.Governor of Delhi was requested to issue necessary notification to secure the area. The Lt.Governor had issued a notification dated 02.04.1996 in exercise of powers under Section 154 of the Delhi Land Reforms Act, 1954 (Hereinafter referred to as DLR Act) declaring uncultivated land of the Gaon Sabha specified in the notification, falling in the Southern Ridge, as surplus land and placed the same at the disposal of the Forest Department of GNCTD. In regard to village Bhati, 11101.19 bighas and in respect of village Dera Mandi 9412.05 bighas were declared as notified ridge and handed over to the Forest Department. This includes the land that forms the subject matter of the present writ petition.

14. It is also pointed out that notification dated 02.04.1996 was challenged before this court in ***Bhagat Singh & Ors. v. Union of India & Anr.***, (2010) SCC OnLine Delhi 2386, but the challenge was rejected by the Division Bench of this court. It is stressed that the petitioners themselves have never challenged the virus of this notification nor the handing over of the land to the Forest Department.

15. The National Green Tribunal vide order dated 11.12.2015 in ***Amarjit Singh Nalwa v. Govt. of NCT of Delhi & Ors.***(supra) directed the respondents to take steps to remove all encroachments in the forest area. Similarly, the National Green Tribunal in ***Sonya Ghosh v. GNCTD & Ors.***(supra) directed the respondents to conduct demarcation of Forest/Gaon Sabha/Ridge land in NCT of

Delhi by taking action against encroachers of such lands.

16. It is further stated that a demarcation notice was issued on 26.09.2017 informing all concerned persons in village Bhati about initiation of process of demarcation/identification of land. The demarcation of land has been completed for the entire Forest/Gaon Sabha land in village Bhati through TSM method and encroachment in the form of farmhouses and unauthorized constructions have been identified. Based on the same, a notice was issued on 19.05.2018 in respect of village Bhati, calling upon all persons who are encroaching upon the lands mentioned in the said notice, to remove all encroachments within 7 days, failing which action for removal would be initiated by the District Task Force. Similarly, a notice was also issued for village Dera Mandi on 01.12.2018. It is stated that the lands which form part of the subject matter of the present petition find mention in the notice dated 19.05.2018.

17. It is further stated that vide order dated 14.08.2019, the National Green Tribunal rejected a contention raised claiming protection qua encroachment under the NCT of Delhi (Special Provisions) Act, 2011 relying upon the judgment of this court in W.P.(C) 5459/2017, titled, '***Resident Welfare Association & Ors. v. Union of India & Ors.***'.

18. It is further stated that in any event, there is an efficacious alternative remedy available under provisions of the Delhi Land Reforms Act to assail the notice dated 19.05.2018. The petitioners instead of assailing the said remedy have approached this court by way of the present writ petition.

19. It is further stated that the respondents have successfully removed encroachment to the extent of 1486 bighas in village Bhati alone, and 127.09

bighas-biswas (26.5 acres) in village Dera Mandi.

20. I have heard learned counsel for the parties.

21. Learned counsel senior counsel appearing for the petitioners has made the following submissions:

i) It is pleaded that the inhabitants of village of Bhati are all original inhabitants and cannot be treated as encroachers on Gaon Sabha land as most of the lands is already recorded as *Abadi deh*. These lands were occupied as *Abadi* prior to 02.04.1996. The handing over of the Gaon Sabha land to the Forest Department, GNCT of Delhi for afforestation by notification dated 02.04.1996 does not divest the petitioners of their rights of residence in the abadi area. It is stressed that the land is *abadi* deh under the Punjab Settlement Manual and there is no provision for recording of individual name of the petitioners in the revenue records.

ii) It is further stressed that the petitioners enjoy the status of "Other Traditional Forest Dwellers" as defined under The Schedule Tribes & Other Traditional Forest Dwellers(Recognition of Forest Rights) Act, 2006. Hence, the rights of the petitioners do not get destroyed by the handing over of the lands in question to the Forest Department, GNCT of Delhi.

iii) Reliance is also placed on section 18 of East Punjab Holding (Consolidation & Prevention of Fragmentation) Act, 1948. It is stated that merely because the land was recorded in the name of Gaon Sabha under the Delhi Land Reforms Act, does not mean that the rights of the villagers to use the village land for their bonafide need were taken away.

iv) It is further urged that the land was neither notified nor reserved as

'forest' under section 20 of the Indian Forest Act and hence, the rights of the petitioners are not affected.

v) Reliance is also placed on the Gazette Notification of the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorised Colonies) Regulations, 2019 to claim that as per the said notification, it provides for regularisation of all constructions in unauthorised colonies.

22. Learned counsel for the respondents has made the following submissions:

(i) He states that the petitioners seek to unsettle the state of affairs that have been in operation for more than two decades and essentially seek to bypass the orders of the Supreme Court dated 25.01.1996 and 13.03.1996 in WP (C) No.4677/1985, titled, ***MC Mehta vs. Union of India***(supra).

(ii) He also relies upon the notification issued on 02.04.1996 by the respondent under Section 154 of the Delhi Land Reforms Act to plead that the Govt. of NCT of Delhi had placed the surplus land of the Gaon Sabha at the disposal of the Forest Department. This was done pursuant to the orders of the Supreme Court noted above.

(iii) It is further stated that reliance of the learned counsel for the petitioners on the NCT of Delhi Laws (Special Provisions) Act is misplaced as the same does not apply to forest land. Reliance is placed on judgment of a Co-ordinate Bench of this court in WP (C) No. 5459/2017, titled, '***Residents Welfare Association & Ors. v. Union of India & Ors.***'(supra) dated 07.07.2017.

(iv) It is further stated that the dispute in question raised by the petitioners is no longer *res integra* and has already been settled by a series of judgments in this regard. Reference has been made to judgments of the Division Bench of this

court in the case of ***Bhagat Singh & Ors. v. Union of India & Anr.***(supra); judgment of the Supreme Court in the case of ***Jagpal Singh & Ors. v. State of Punjab & Ors.***, ***(2011) 11 SCC 396***; judgment of a Co-ordinate Bench of this court in the case of ***Freedom Fighter Social Welfare Association vs. Union of India & Ors.,*** (***2011) SCC OnLine Delhi 1318***.

23. I may first look at the judgments of the Supreme Court dated 25.01.1996 and 13.03.1996. The Supreme Court in the said judgment of ***MC Mehta vs. Union of India***, ***(1996) 2 SCALE 55***, dated 25.01.1996 held as follows:

> "7. We have heard learned counsel for NCT, Delhi Administration regarding the Gaon Sabha area forming part of the Ridge. Learned counsel states that various proposals regarding handing over the Gaon Sabha area (part of the Ridge) to the Forest Department have been examined by a Committee appointed by the Administration. Finally, the committee has taken a decision that a Notification under Section 35 of the Indian Forests Act 1927 be issued. We are of the view that the Notification under Section 35 will not solve the problem which we are facing. The learned counsel states that the Committee was of the view that the provisions of Section 154 of the Delhi Land Reforms Act, 1954 are not attracted because in view of the expression "on the commencement of the Act" in Section 154, power under the proviso to Section 154 could only be exercised at the time of the commencement of the Act and not thereafter. That may be one way of the looking at the Section but since it is for the first time that a committee has been appointed to examine this aspect and it was never examined earlier by the Delhi Administration at any point of time, we are prima facie of the view that the provisions of Section 154 can even now be invoked especially when it is crystal clear that this area is of no utility to the Gaon Sabha and in any case cannot be permitted to be used by Gaon Sabha for any purpose. This is Ridge area which has to be presented. No cultivation or any type of construction can be permitted on this area. In this view of the matter, we request the committee to reconsider the question of

issuing a notification under the proviso to Section 154 of the Act."

24. Reference may also be had to the judgment of the Supreme Court in the same case of ***MC Mehta vs. Union of India, (1996) 3 SCALE 20,*** dated 13.03.1996 where the Supreme Court held as follows:

> "8. We do not agree with Mr. GS Patnaik. In view of the order quoted above, nothing more remains to be done by the NCT, Delhi Administration, except to issue the necessary notification. We direct that the necessary notification be issued within three weeks from today. We further request the Lt. Governor, to have the matter expedited. The land is part of the ridge area. Even though it is not a reserved forest, it happens to be a forest. This area cannot be utilised in any manner in view of the prohibitions contained under the Forest Conservation Act, 1980. In this view of the matter, issuing of notification is a simple formality to secure the area. We, therefore, reiterate and request the Lt. Governor to have necessary notification issued within time specified by us."

25. The Supreme Court clearly held that the area is a ridge area and has to be preserved. No cultivation or any type of construction can be permitted in the area. The Supreme Court requested the concerned committee to reconsider the question and issue a notification under Section 154 of the DLR Act. Subsequently, on 03.03.1996 a direction was issued to Govt. of NCT of Delhi to issue the necessary notification clarifying that though it is not a reserved forest it happens to be a forest and cannot be utilized in any manner in view of the prohibitions contained under the Forest Conservation Act. The court reiterated that the notification under Section 154 of the DLR Act must be issued.

26. It is subsequent to the aforesaid orders of the Supreme Court that on 02.04.1996 the respondent issued the notification under Section 154 of the DLR

Act. The land mentioned in the notification was declared as surplus and excluded from vesting in the Gaon Sabha and was placed at the disposal of the Forest Department, Govt. of NCT of Delhi. The land in question now vests with the Forest Department, Govt. of NCT of Delhi.

27. Clearly, the Supreme Court has categorically held in its judgment dated 25.01.1996 in the case of '***M.C.Mehta v. Union of India***'(supra) that the area in question is ridge area and no cultivation or any type of construction can be permitted in this area. In the light of these categorical directions recorded by the Supreme Court, there is clearly no merit in any of the pleas now sought to be raised by the petitioner.

28. I may however, look at the pleas raised by the petitioners. Regarding the first plea of the petitioners, namely, being old inhabitants of the village Bhati and hence cannot be treated as encroachers, the plea is misplaced. At best, the case of the petitioners is that they have occupied Gaon Sabha land for their residential purposes claiming that being settled in the area for 100 years they have a right to occupy the Gaon Sabha land. The plea is bereft of any legal details and such a plea clearly cannot be accepted. That apart, such a plea raises highly disputed question of fact. There is nothing to show or substantiate the claim of the petitioners that those who are residing in the village - Extended Lal Dora abadi (i.e. the concerned area) are all original inhabitants of the village in question. In my opinion, such plea has no merit.

29. In the above context reference may also be had to a judgment of the Division Bench of this court passed in somewhat similar facts and circumstances as the present case. Reference in this context may be had to the judgment of the

Division Bench this court in ***Bhagat Singh vs Union of India*** (supra). That was also a case where the petitioners had filed a writ petition claiming that the forefathers were in exclusive, constructive and actual physical possession of various lands forming part of the revenue estate of village Bhatti Kalan, much prior to the Delhi Land Reforms Act coming into force. Demolitions were proposed. The writ petition was filed seeking quashing of the notification dated 02.04.1996 published in the Delhi Gazette where land of Gaon Sabha falling in the ridge area was declared as surplus land and excluded from vesting in the Gaon Sabha. In those facts the Division Bench held as follow:

> "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 Goan 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.

> 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.
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> 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."

Hence, somewhat identical pleas as are being raised in the present petition were dismissed by the court. Court stated that Gaon Sabha land is not meant for individuals for their enjoyment. Such claim as the petitioners have raised herein claiming inherent rights to reside in the extended village abadi being allegedly original inhabitants of the village were rejected.

30. In the above context reference may also be had to the judgment of the Supreme Court in ***Jagpal Singh & Ors. v. State of Punjab & Ors.***(supra). The Supreme Court held as follows:

> "2. Since time immemorial there have been common lands inhering in the village communities in India, variously called Gram Sabha land, Gram Panchayat land (in many North Indian States), shamlat deh (in Punjab, etc.), mandaveli and poramboke land (in South India), kalam, maidan, etc., depending on the nature of user. These public utility lands in the villages were for centuries used for the

common benefit of the villagers of the village such as ponds for various purposes e.g. for their cattle to drink and bathe, for storing their harvested grain, as grazing ground for the cattle, threshing floor, maidan for playing by children, carnivals, circuses, ramlila, cart stands, water bodies, passages, cremation ground or graveyards, etc. These lands stood vested through local laws in the State, which handed over their management to Gram Sabhas/Gram Panchayats. They were generally treated as inalienable in order that their status as community land be preserved. There were no doubt some exceptions to this rule which permitted the Gram Sabha/Gram Panchayat to lease out some of this land to landless labourers and members of the Scheduled Castes/Tribes, but this was only to be done in exceptional cases.

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4. What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, *and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper*. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with their original character, for personal aggrandisement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs.

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13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularising such illegalities must not be permitted because it is Gram Sabha land

which must be kept for the common use of the villagers of the village.

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23. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorised occupants of the Gram Sabha/Gram Panchayat/poramboke/shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show-cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularising the illegal possession. Regularisation should only be permitted in exceptional cases e.g. where lease has been granted under some government notification to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

Clearly the plea of the petitioners claiming right to reside in the village land i.e. the Extended Lal Dora area based on the alleged facts that they have been residing since generations is a misplaced contention without any merits.

31. Next plea raised by the petitioners is the reliance on The Schedule Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. It is claimed that the Petitioners are "Other Traditional Forest Dwellers" and have stated rights in the area. Section 2(o) of the Act, reads as follows:

"2(o) Other traditional forest dweller" means any member or community who has for at least three generations prior to the l3th

day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.

Explanation.-For the purpose of this clause, "generation" means a period comprising of twenty-five years."

32. Section 3 of the said Act spells out the rights, which secure to apart from other "Other Traditional Forest Dwellers".

33. Section 6(1) of the said Act reads as follows:

"6.(1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee."

34. Hence to claim the rights under section 3 of the Act, the person concerned has to file a claim before the concerned Gram Sabha, who is the authority to initiate process for determining the nature and extent of individual forest right. There is not a whisper anywhere that any such claim has been preferred by the petitioners. The said Act came into force in 2006. Now 13 years after enactment of the Act, the petitioners on receiving a notice of demolition of the property have woken up claiming themselves to be "Other Traditional Forest Dwellers" namely a person who has for the last three generations resided in the forest land and depend on the forest for their *bonafide* livelihood needs. The plea is factually not supported by any material and cannot be accepted. That apart the

plea suffers from delay and laches. The petitioner having taken no steps to assert their claim as "Other Traditional Forest Dweller" cannot be permitted to thwart the process initiated by the respondent in this manner.

35. Another plea strongly raised by learned senior counsel for the petitioners was the reliance on the Govt. of NCT of Delhi Laws (Special Provisions) Act to claim that the houses of the petitioners cannot be demolished in view of the said special protection given.

36. In this context reference may be had to the judgment of a Co-ordinate Bench of this court in the case of ***Residents Welfare Association & Ors. v. Union of India & Ors.(s***upra) where the Co-ordinate Bench of this court held as follows:

> "10. The Supreme Court in the matter of M. C. Mehta v. UOI (supra) had in the order dated 25.01.1996 passed directions for preservation of the Ridge area and unequivocally held that no cultivation or construction could be permitted in such area. Thereafter, by an order dated 13.03.1996, the Supreme Court held that the lands in question (which were surplus Gaon Sabha lands) were forests and could not be utilised in any manner and thus issuing a notification to secure the area was a simple formality. The court also requested the Lieutenant Governor to issue the necessary notification.
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> 15. The contention advanced by the petitioners that the encroachments on the said land are protected under the Act is unmerited. In terms of Section 3(3) of the Act, all encroachments are protected from any action pursuant to notices issued by any local authority. The term local authority as defined under Section 2(d) of the Act does not include the Forest Department or the Government of NCT.

> 16. Although, by virtue of Section 3(2) of the Act, status quo as to certain encroachments or unauthorised developments as on 01.01.2006 is to be maintained, the same plainly does not extend to forests as no such use is permitted under the Forest (Conservation) Act, 1980. Further the Act was enacted in public interest so that no hardship is caused to the public until revision of Master Plan. The same has little relevance in the context of Forest lands, which must be preserved. More importantly, the provisions of the Act cannot be read as protecting unauthorised encroachments, which are necessarily required to be removed for protecting the water bodies and preserving the natural flow of water, which is necessary to preserve and provide the basic necessity of life. Further is necessary to address the issue of water logging as that brings the functioning of the city to a standstill, causes loss to property and exposes its residents to outbreak of diseases. The encroachment by petitioners cannot be protected at the cost of the other residents of the city. This is neither the object nor the import of the Act."

37. Clearly, reliance of the petitioners on the National Capital Territory of Delhi Laws (Special Provisions) Act is misplaced. The provisions of the said act do not apply to forest land i.e. that which is subject matter of the present writ petition.

38. Another plea raised by the learned senior counsel for the petitioners was in regards to the reliance on the provisions of the East Punjab Holding (Consolidation & Prevention of Fragmentation) Act, 1948. It was claimed that merely because the land is recorded in the Gaon Sabha under the Delhi Land Reforms Act does not mean that the rights of the villagers to use the village land for their bonafide need was taken away. I may note that this plea was noted but was not elaborated/spelt out in any manner whatsoever. Such a plea as noted above was already rejected by the Division Bench of this court in the case of

Bhagat Singh vs Union of India (supra).

39. Learned counsel for the respondents strongly submits that the petitioners are rank trespassers and are only desperately trying to grab land (the land in question) and to hold onto it and no relief can be given to such a person. Reliance is placed on the decision of a Co-ordinate Bench of this court in the case of ***Freedom Fighter Social Welfare Association vs. Union of India & Ors.***(supra). The Co-ordinate Bench held as follows:

> "15. Seen in the aforesaid perspective, when the purport of the order was preservation of environment necessary for the very survival of the city, it is irrelevant whether the encroachment by the petitioners of the land with respect whereto the Notification has been issued was before the said Notification or thereafter. Even if the petitioners, as they claim had encroached upon the said land prior to the year 1996, they cannot be permitted to continue with the encroachment. The land subject matter of the Notification is required to be afforested by removal of all encroachment, structures etc. existing thereon.
>
> 16. I am further of the view that now in any case in view of the Regulations for Regularization of Unauthorized Colonies in Delhi, 2008 which prohibit consideration for regularization of unauthorized colonies/portions thereof falling in notified or reserved forest areas, the matter has been placed beyond any pale of controversy. It cannot now be contended that the regularization of the unauthorized colony on the land is pending consideration. The conflict and inconsistency relying whereupon the petitions were filed and the interim orders obtained no longer exists. The petitions now have to necessarily fail.
>
> 17. There is another aspect of the matter. The petitioners admittedly are trespassers/encroachers on Gaon Sabha land. They have no equities or rights in their favour. Though the Government as a populist or a humane measure has agreed to consider regularization of unauthorized colonies which had come up illegally on public/private land but none can claim any right thereto. The

> petitioners as encroachers/trespassers on land, be it of the Gaon Sabha or of the forest, are liable to be ejected therefrom.
>
> xxxxx
>
> 20. The said contention is misconceived. The Notification dated 2nd April, 1996 is not the sole repository of the land in the ridge/forest area. The said Notification had to be issued only for the reason that though the said land in the Master Plan was shown as part of the ridge area but under the Delhi Land Reforms Act, 1954 vested in the Gaon Sabha. The Notification was therefore directed to be issued for exempting the said land from the land vesting in Gaon Sabha and to place the same with the Forest Department. It thus cannot be urged that the land in Khasra Nos. 223 & 224 in Chattarpur Enclave, village Chattarpur, Mehrauli, New Delhi is not part of the ridge/forest merely for the reason of not finding mention in the said Notification."

40. Clearly, the pleas raised by the petitioners claiming rights to continue to illegally occupy the land in question which vests with the Forest Department on the ground of having built a structure on the said land decades ago is a misplaced and misdirected plea. Same is without merit.

41. There is another aspect in the matter. It is quite clear that the petitioners at any earlier stage, did not assert any of the so called rights which are now being raised. Around one and half years ago the impugned notice was issued to vacate the said land in 2018. In October, 2019 the present writ petition was filed. The writ petition raises several pleas to claim rights in the land. The petitioners claim that they have settled in the said land for generations, and have rights in the said lands. None of these rights were claimed or asserted in any manner whatsoever for decades till the bulldozers arrived at the site. Clearly, the pleas of the

petitioners cannot even otherwise be accepted on account of delay and laches.

42. There is no merit in the petition. The same is dismissed. Interim order is vacated.

JAYANT NATH, J.

MARCH 24, 2021/v