

ITEM NO.4

Court 3 (Video Conferencing)

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition (Civil) No.723/2020

PARVEEN KUMAR

Petitioner(s)

VERSUS

DELHI CANTONMENT BOARD & ORS.

Respondent(s)

(With appln.(s) for appropriate orders/directions)

WITH S.L.P.(C) No.8866/2020 (XIV)

(With appln.(s) for exemption from filing c/c of the impugned judgment and withdrawal of case)

Date : 25-09-2020 These petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MS. JUSTICE INDU MALHOTRA

HON'BLE MR. JUSTICE K.M. JOSEPH

Mr. Gaurav Agrawal, AOR (A.C.)

For Petitioner(s)

Mr. Abhishek Sharma, AOR

For Respondent(s)

Mr. Jayant Kumar Sud, ASG

Mr. Anmol Chandan, Adv.

Ms. Seema Bengani, Adv.

Mr. Arvind Kumar Sharma, AOR

Ms. Nidhi Mohan Parashar, AOR

Mr. Tarveen Nanda, Adv.

Mr. Vikrant Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

- 1 This litigation has a long and checkered history. This court has been moved in two proceedings; a petition under Article 32 of the Constitution and a Special Leave Petition arising out of the judgment and order dated 24 February 2020 of the High Court of Delhi.

- 2 The grievance of the petitioner is that his residential property has been sealed and demolition notices have been issued by the Delhi Cantonment Board (DCB). DCB supports its action on the ground that the petitioner has constructed without submitting building plans for sanction and continued to do so despite its directions to cease and desist from constructing in an unauthorized manner. In assailing the action initiated against him, the petitioner sought to question whether the property falls within DCB's jurisdiction. A suit, being Civil Suit No 759 of 2018, has been filed by a neighbour of the petitioner in the Patiala House Courts, to which the DCB and the petitioner are parties, to seek an injunction against the petitioner. In proceedings arising out of the suit, on 9 May 2019, the High Court passed an order with the consent of the parties and direct that a specific issue be framed in relation to the jurisdiction of DCB over the land bearing Khasra 960 claimed by the petitioner. The order of the Delhi High Court was challenged before this Court by the petitioner in SLP(C) No 19892/2019. The SLP was dismissed on 26 August 2019. In compliance with the order of the High Court, the trial court has framed an issue in relation to the jurisdiction of DCB, on 17 February 2020. The issue of the jurisdiction of DCB is thus pending determination in the civil suit since the petitioner had thus far sought to contest it.
- 3 Apart from the above proceedings, the petitioner had also instituted a writ petition under Article 226 of the Constitution before the High Court of Delhi (WPC No 1318/2018) contending that the acquisition proceedings in relation to khasra No 960, which is claimed by him, have lapsed. By an order dated 20 August 2019, the High Court permitted the petitioner to withdraw the petition, but granted him the liberty to file fresh proceedings with an explanation for the delay in challenging the acquisition proceedings. No further proceedings have been instituted.
- 4 Contesting the claim of the petitioner, the Union of India represented by the Additional Solicitor General, Mr Jayant Sud and Ms Nidhi Mohan Parashar, counsel for DCB, have urged that in relation to the acquisition proceedings, an award was passed on 9 February 1976, and compensation of Rs 3.50 lakhs has already been paid. The acquisition proceedings do not form the

subject matter of the present proceedings. Hence, we are not adjudicating upon the merits of any of the issues in relation thereto in those proceedings.

- 5 The petition under Article 32 was instituted by the petitioner seeking to challenge a public notice dated 15 February 2020 and place in contest the authority of DCB to initiate any action over the suit property. The Special Leave Petition under Article 136 of the Constitution has arisen from a judgment and order of the High Court dismissing a Letters Patent Appeal against the rejection of the writ petition filed by the petitioner. The Single Judge observed that the challenge in the writ petition in regard to the authority and jurisdiction of DCB has been dealt with in the earlier order of the High Court, which was affirmed by this Court; and in terms of the order, DCB's jurisdiction is to be decided in the pending suit where the petitioner has placed it in issue. This order was confirmed by the Division Bench. However, a notice of contempt has been issued against the petitioner for certain statements made by him in the pleadings.
- 6 Faced with a multiplicity of the proceedings which have been initiated by the petitioner, who initially appeared in person and is an advocate as well, this court requested Mr Gaurav Agrawal, learned counsel to appear as *amicus curiae* so that the contentions of the petitioner could be placed in a more objective manner before the Court. The Court must record that the *amicus curiae* has painstakingly compiled written submissions, besides taking the time and trouble of explaining the correct position of the matter to the petitioner, with a view to find a solution. The Court appreciates the objective assistance rendered by the *amicus curiae*.
- 7 During the course of the proceedings, after several sessions of hearing, an interlocutory application - IA No 93630 of 2020 - has been filed on behalf of the petitioner. During the course of the video conferencing hearing, the petitioner has personally appeared on the link made available by the Registry of this Court. Appearance on his behalf has also been entered by Mr Abhishek Kumar, who has appeared in the course of the hearing. The IA contains the following prayers:

- "a) Allow the Petitioners to withdraw the present SLP; and/or
- b) Allow the Petitioners to file/submit building plan for sanction to DCB, within a period of one week; and/or
- c) Direct the DCB to take a decision the Petitioners' building within a period of one week, after its submission by Petitioners to DCB; and/or
- d) Direct the DCB de-seal the property of the Petitioner, on the approval of the Petitioners' building plan; and/or
- e) Direct the DCB to allow the Petitioners to carry out the construction over suit premising in accordance with the approved building plan; and/or
- f) Expunge the remarks made by the Hon'ble High Court against the Petitioner in the impugned; and/or
- g) Allow the Petitioner to withdraw the LPA along with its contents all together; and/or
- h) pass any such further or other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

- 8 The first prayer of the petitioner, as evident from the portion extracted above, is for withdrawal of the Special Leave Petition. The petitioner, however, has not prayed for a withdrawal simpliciter since he has sought other reliefs in terms of the clauses (b) to (g) which have been extracted above. In paragraph 3 of the interlocutory application, the petitioner has unconditionally accepted the jurisdiction of DCB over the property in question. Paragraph 3 of the interlocutory application is extracted below:

"That Shri Jayant K. Sud, Id. Additional Solicitor General, representing *vide* his email dated 08.09.2020 had shared the map with regard to subject litigation. It is humbly submitted that after going through the same. Petitioner is convinced that the suit premises are the subject-matter of the jurisdiction of Delhi Cantonment Board. In other words, having clarity, Petitioner concedes to the jurisdiction of Delhi Cantonment Board over his property."

- 9 In view of the above averment, the petitioner has stated in paragraph 4:

"That in light of the recent development, the present petition is

rendered infructuous as well as unwarranted and the Petitioner does not wish to continue with the same.”

- 10 Based on his having accepted the jurisdiction of DCB, the petitioner submits that he will file a building plan for sanction before DCB.
- 11 Mr Jayant Sud, Additional Solicitor General has responded to the averments contained in paragraph 3 of the interlocutory application which has been extracted above. He submitted that there can be no objection to the petitioner having accepted that DCB has jurisdiction. However, as a matter of fact, the map which he had placed before this Court was an expanded version of the map which had already been filed before the Delhi High Court. Be that as it may, it is now evident from the averments in paragraph 3 that the petitioner has accepted the correctness of the map, which has been placed on the record and it is on that basis that he states that he would apply to DCB for approval of the building plan.
- 12 Responding to the submission of the petitioner, Ms Nidhi Mohan Parashar, counsel for DCB submits that she has instructions from the Officiating Executive Engineer that the construction which has been carried out by the petitioner is not compliant either with the FAR norms or with set-back requirements. In view of the request which has been made by the petitioner, she has stated that if the Court would so direct, the application for sanction of the building plan would be considered by the DCB in accordance with law.
- 13 By the petitioner having accepted the jurisdiction of DCB over the land in question, the controversy which has been initiated by him would come to an end. The petitioner is at liberty to submit a building plan for sanction to DCB. Without this Court determining whether the building plan should be sanctioned, we direct the DCB to take a decision on the building plan to be submitted, within a period of four weeks from the date of its submission. The decision of the DCB shall be taken in accordance with law and the prevailing building regulations and bye laws. In the event that the petitioner applies for sanction within a period of two weeks from today, DCB shall not give effect to its notices of demolition until it communicates its decision in regard to the building plan of which sanction is sought by the petitioner.

- 14 The above directions have been issued by this Court in exercise of the power under Article 142 of the Constitution to do complete justice, since the petitioner has in the proceedings before this Court, unconditionally accepted the jurisdiction of DCB.
- 15 The High Court of Delhi has initiated contempt proceedings against the petitioner. One of the prayers which has been addressed before this Court is that the remarks made by the High Court against the petitioner in the contempt proceedings may be expunged. We decline to issue a direction of this nature. However, in order to enable the petitioner to make a *bona fide* effort to rectify the position which was noticed by the High Court while issuing notice of contempt, we permit the petitioner to file within a period of one week from today, an unconditional apology before the Division Bench of the High Court. In addition to filing an unconditional apology, the petitioner shall file on affidavit an unconditional statement withdrawing all the averments in the pleadings which led to the issuance of the notice of contempt by the High Court. Should the petitioner do so, we hope and trust that the High Court will take an appropriate view of the matter.
- 16 The Special Leave Petition shall stand disposed of in the above terms since no further submission has been urged.
- 17 The Writ Petition is dismissed as not pressed.
- 18 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
AR-cum-PS

(SAROJ KUMARI GAUR)
BRANCH OFFICER