

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 1185 of 2020

Petitioner :- Dev Pal

Respondent :- Ghaziabad Development Authority And 4 Others

Counsel for Petitioner :- Ali Qambar Zaidi

Counsel for Respondent :- Ravi Prakash Pandey,A.S.G.I.,C.S.C.

Hon'ble Govind Mathur,Chief Justice

Hon'ble Siddhartha Varma,J.

Supplementary affidavit filed today be kept on record.

This Public Interest Litigation, before us, is preferred to have the following relief :-.

"I. Issue a writ, order or direction in the nature of MANDAMUS thereby directing respondent no.1 i.e. Ghaziabad Development Authority to not undertake any further demolition and or eviction of residents of Bhovapur Basti behind Radisson blue hotel, Kaushambi, Ghaziabad, UP.

II. Issue a writ, order or direction in the nature of MANDAMUS thereby directing the respondents No.1 to 5 to place before your lordships all relevant rehabilitation policies applicable on slum dwellers.

III. Issue a writ, order or direction in the nature of MANDAMUS thereby directing respondents No.1 to 5 to undertake the complete rehabilitation of all the residents of Bhoapur Basti behind Radission blue hotel, Kaushambi, Ghaziabad, UP.

IV. Issue an appropriate writ, order or direction thereby directing the respondents to pay compensation of Rs.20000 to each of the residents as compensation for unlawful demolition undertaken on 30.09.20 and 9.10.20 and on any subsequent date."

The factual matrix necessary to be noticed is that Bhovapur Basti that falls within the jurisdiction of Ghaziabad Development Authority, Ghaziabad came into existence in the

year 1990. In the Basti aforesaid, labourers coming from different parts of the country are residing and some of the labourers are involved in occupation of rag-picking. As per the petitioner, the District Administration, Ghaziabad at the instance of Ghaziabad Development Authority is continuously making efforts to remove the residents of the Basti aforesaid without providing them any alternative land for their rehabilitation.

It is asserted that on 9.10.2020, some of the houses of Bhovapur Basti were damaged as an effort was made to evict the residents from the Basti aforesaid. Apprehending complete demolition of houses in the Basti, the instant petition for writ is preferred.

It is stated at Bar by Sri A.Q. Zaidi, learned counsel appearing on behalf of the petitioner that yesterday about 150 houses have already been demolished by the Ghaziabad Development Authority. According to the learned counsel, the residents of Bhovapur Basti whose houses have been demolished are having no roof to protect themselves and they are just sitting below the open sky. It is further submitted that the respondents are acting arbitrarily and they may demolish the remaining houses today or in next coming few days. According to learned counsel, the residents of the Basti aforesaid cannot be evicted without providing them an alternative place of residence as prescribed under the Proviso to Section 26-A of the Uttar Pradesh Planning and Development Act, 1973 (hereinafter referred to as the "Act of 1973").

While opposing the petition for writ, learned counsel appearing on behalf of the Ghaziabad Development Authority states that whatever action taken by the Authority is in compliance of the directions given by this Court on 22.9.2015 in Public Interest Litigation No.2014 of 2015. The relevant part of the order is

" We fail to see any reason or justification for the Authority to be negligent in taking action on its own, and it is only when an order is passed by the Court that GDA is galvanized into action. The Authority must exercise its own statutory powers and will now abide by the assurance which has been rendered before the Court by ensuring that no encroachments are permitted on the land in future.

In respect of Khasra Nos 231, 355, 357 and 361 of revenue village Hasanpur Bhowapur, a second appeal (1256 of 2014) is pending before this Court. GDA has assured that it will take all necessary steps in respect of the said second appeal so that it can be disposed at the earliest possible date. The learned counsel appearing on behalf of GDA shall be at liberty to place a copy of this order before the Joint Registrar (Listing) so that necessary action is taken for early listing of the appeal.

There is a land adjacent to the aforesaid land. The Court has been assured that the matter is being looked into by GDA so that a decision for removal of encroachments can be taken at the earliest possible date. This exercise shall be completed no later than within a period of one month from today.

The Court has also been apprised of the action which has been pursued for the removal of encroachments since 22 July 2015. It has been stated in paragraph 6 of the counter affidavit that the encroachments over the naala situated in front of Yashoda Hospital would be completely removed by 30 September 2015.

As regards the issue of solid waste disposal, the Court has been apprised of the fact that GDA and the Nagar Nigam will allocate a suitable place after consultation with the district administration. We direct the District Magistrate, Ghaziabad, the Vice Chairperson of GDA and the Municipal Commissioner of the Nagar Nigam Ghaziabad to hold a meeting no later than within a period of ten days of the receipt of a certified copy of this order. Necessary steps shall be taken within a period of one month for allocating a suitable site for solid waste disposal. The Court must be apprised, by the next date of listing, of the progress which has been made in the meantime for ensuring that proper arrangements are implemented for the disposal of solid waste.

The counter affidavit filed by GDA states that an amount of Rs 172.66 lacs has been provided by GDA to the Nagar Nigam with regard to the cleaning of naalas and other work pertaining to Kaushambi Nandi Apartment,

Trishul Apartment, Kamthgiri Apartment, Ganga Apartment, Shiwalik Apartment and Kailash Tower and the work is to be completed by 31 December 2015.

The grievance of the petitioners is that despite the work which has been carried out by GDA and the Nagar Nigam, there is still a back flow of sewage. The learned counsel for GDA has assured the Court that this issue will be taken up with the highest priority so that the grievance of the petitioners is remedied and the Court can be apprised in that regard by the next date.

Since in pursuance of the previous directions which have been issued by the Court, work has now been initiated, we direct that the petition be now listed before this Court on 2 December 2015 for monitoring progress and compliance. As in the past, a joint compliance report shall be submitted by the Vice Chairperson of GDA and the Municipal Commissioner of the Nagar Nigam by the next date."

It is further stated that admittedly the residents of Bhovapur Basti are trespassers and therefore, the encroachment made by them are required to be removed. Learned counsel also wants some time file a counter affidavit to the petition.

Heard learned counsel for the parties for the interim relief.

As per the averments contained in the petition for writ, Bhovapur Basti is existing since 1990. The residents of Bhovapur Basti are coming from lower section of the society and looking to the need for rehabilitation of such persons, the State Legislature under the Act of 1973 protected their right of residence under the Proviso to Section 26-A in the following terms :-

"Provided that any encroachment made on public land by a person belonging to weaker section on or before the date of commencement of the Uttar Pradesh Planning and Development (Amendment) Act, 1997 shall not be removed until alternative land or accommodation is offered to rehabilitate him in such manner and on such terms and conditions as may be prescribed."

In view of the Proviso aforesaid, prima-facie we are satisfied that the Ghaziabad Development Authority should have offered a place to rehabilitate the residents of Bhovapur Basti before their eviction and the demolition of their houses. It would also be appropriate to state that when the entire globe is facing a pandemic, it is the responsibility of the State to protect everyone, more specifically the population of weaker sections from any hardship that may aggravate their plight adversely.

While granting time to the respondent Development Authority to file counter affidavit, we deem it appropriate to issue following interim directions :-

(i) The Ghaziabad Development Authority shall not proceed with demolition of the houses situate in Bhovapur Basti till further orders;

(ii) The District Administration, Ghaziabad shall provide temporary shelter to the residents of Bhovapur Basti whose houses have already been demolished;

(iii) The Development Authority and the State shall see to the viability of providing houses under the Pradhan Mantri Awas Yojna;

(iv) All necessary arrangements shall be made as a temporary measure by the Ghaziabad Development Authority to provide essential amenities including light and water to the residents of Bhovapur Basti till further orders;

(v) All necessary medical facilities are also required to be extended to the residents of Bhovapur Basti.

On the next date of listing of the writ petition, the Ghaziabad Development Authority shall propose a complete plan for

rehabilitation of the residents of Bhovapur Basti.

Let this writ petition be listed on 18 November, 2020.

The counsel for the Ghaziabad Development Authority shall communicate this order to the respondents immediately.

Order Date :- 21.10.2020

GS

(Govind Mathur, C.J.)

(Siddhartha Varma, J.)