

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

Date of decision: 20<sup>th</sup> FEBRUARY, 2023

IN THE MATTER OF:

+ **W.P.(C) 8183/2022**

GORE LAL SINGH

..... Petitioner

Through: Ms. Rashmi Nandakumar, Advocate

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Anupam Srivastava, ASC for  
GNCTD with Mr. Dhairya Gupta,  
Advocates

Ms. Beenashaw N. Soni, SC, MCD  
with Ms. Mansi Bhatia, Ms. Mansi  
Jain and Mr. Bhupesh Pandotra,  
Advs. for R-4.

Ms. Shobhna Takiar, SC, DDA with  
Mr. Kuljeet Singh, Advocate

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

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

*“1. DECLARE that Leprosy affected persons are equal members of our society and discrimination against Leprosy affected persons is in clear violation of Articles 14 and 21 of the Constitution;*

*2. DECLARE that the Leprosy affected persons such as the Petitioner who live in Leprosy colonies have right inherent in their right to life under Article 21 to occupy*

*and own land in these colonies;*

*3. DIRECT the Respondent(s) 1 to 3 to give effect to the right declared under (2) by appropriate measures.”*

2. On 24.05.2022, the matter was first listed before the learned Single Judge and the learned Single Judge directed the Respondents to file the Status Report. The matter was thereafter adjourned to 06.09.2022. On 06.09.2022, the matter was adjourned to 03.11.2022.

3. On 03.11.2022, this Court directed the Petitioner to file an amended memo of parties impleading the Municipal Corporation of Delhi (MCD) as one of the Respondents and the matter was adjourned to 16.01.2023. On 16.01.2023, the learned Single Judge passed the following Order:-

*“2. The present petition has been filed by the Petitioner who was earlier affected by leprosy and was thereafter cured of the disease. He has filed this petition seeking certain directions in respect of implementation of measures for the benefit of the leprosy affected persons.*

*3. The prayer in this petition is extracted as under: -*

*“1. DECLARE that Leprosy affected persons are equal members of our society and discrimination against Leprosy affected persons is in clear violation of Articles 14 and 21 of the Constitution;*

*2. DECLARE that the Leprosy affected persons such as the Petitioner who live in Leprosy colonies have right inherent in their right to life under Article 21 to occupy and own land in these colonies;*

*3. DIRECT the Respondent(s) 1 to 3 to give effect to the right declared under (2) by appropriate measures.”*

*4. Id. Counsel for the Respondent submits that this is in the nature of a Public Interest Litigation and ought to be listed before the appropriate Bench. This request is not opposed by the Id. Counsel for the Petitioner. Considering the nature of the matter, it is deemed appropriate that the matter be listed before the Bench dealing with Public Interest Litigations, as per Roster.*

*5. In the meantime, let the Respondents file their counter affidavits within four weeks.*

*6. List before the appropriate Bench, as per roster, subject to orders of Hon'ble the Chief Justice on 20th February, 2023."*

4. Pursuant to the Order dated 16.01.2023, the matter was placed before this Court.

5. It is stated that since the Petitioner is a leprosy affected person, he became a resident of Gandhi Kusht Ashram, Tahirpur, New Delhi and was allotted Room No.15 at the Gandhi Kusht Ashram.

6. It is stated that the persons affected by leprosy are being discriminated against on the misplaced ground that the disease is incurable and is highly infectious. The most invidious form of discrimination has been the isolation of leprosy affected persons, permitting them to live only in leprosy colonies.

7. It is stated that a person who contracts leprosy is almost immediately marginalised and is ostracised. The patient is not permitted to live in regular residential spaces and they are forced to live in certain specified areas. It is further stated that the Gandhi Kusht Ashram, Tahirpur, New Delhi where the Petitioner was staying is situated in a locality where there are several other Ashrams set up within the same locality for leprosy affected persons, which have been set up on land owned by the Department of Social Welfare,

GNCTD. It is submitted that these leprosy colonies, despite all the welfare measures undertaken by the Respondents, have not been recognised as valid residential areas like other neighbourhoods and the residents of these colonies do not have any property rights in these colonies. It is stated that writ petitions have been filed before the Apex Court and this Court praying for steps to be taken for the welfare and leprosy affected persons living in the leprosy colonies.

8. It is stated that a writ petition bearing W.P.(C) 10210/1985 was filed before the Apex Court, praying for steps to be taken for the welfare of leprosy affected persons living in six leprosy colonies in Delhi. However, the Apex Court remitted the writ petition to this Court and the same was renumbered as W.P.(C) 3998/1996.

9. W.P.(C) 3998/1996 was disposed of after formulating a Committee and the Committee was required to submit a report to this Court regarding the implementation of the scheme. It is stated that since the schemes were not being implemented in letter and spirit, contempt petition bearing CONT.CAS(C) No.224/2004 was filed in this Court and this Court *vide* Order dated 20.12.2006 directed the Chief Secretary/Concerned Health Secretary to constitute a Nodal Committee for developing facilities at Tahirpur.

10. It is stated that Tahirpur complex, where the Petitioner is residing, is having serious problem of encroachment and that despite several representations, no serious steps have been taken for removal of unauthorised constructions and encroachments inside Tahirpur complex.

11. This writ petition has been filed primarily stating that the problem of encroachment can be solved only by granting land rights to the occupants.

The Petitioner relies on Report No.256 of the Law Commission of India which recommends that people who have been living in the colonies for years and wish to continue residing there with families. including children, live under the constant threat of eviction due to lack of ownership and title to the land and, therefore, the Law Commission of India recommended measures to be taken to legalise title/ownership of the property. The Petitioner, therefore, prayed that this Court must issue a writ to such of those persons who are living in these colonies to occupy and own land in these colonies.

12. Notice was issued in the present writ petition and a Status Report has been filed on 01.11.2022. The Status Report shows that there are 1077 number of houses in Leprosy Complex, Tahirpur, and that the land was transferred to the Department of Social Welfare by MCD in compliance of the Minutes of Meeting held under the Chairmanship of the Lieutenant Governor of Delhi on 06.01.1983. Further, it is stated that the residents of 576 tenements were leprosy affected persons and as many as 492 individuals produced medical certificates pertaining to history of ailment in their life. However, on a careful analysis of the medical certificates produced by the individuals, majority of them were not suffering from leprosy. The Status Report also states that the Department of Social Welfare provides financial assistance to the disabled persons. The relevant portion of the Status Report read as under:-

*“2. In Compliance of directions given in the matter of CCPNo. 224/2004, Kusth Asha Deep Vs A. K.Paitandy, Secrectaiy (Social Welfare), The SDM/Convener STF was intimated to take action against non-leprosy affected persons and unauthorized construction as identified, (Copy of MoM is Enclosed at 136-139/C).*

*3. Meeting of STF was held at in the chamber of convener STF/SDM, Seemapuri on 21,12,2016 at 3:00 PM in connection with of removal of encroachment/unauthorized construction and eviction of illegal occupants from the premises at Tahirpur Leprosy Complex under the control, occupation and management of Department of Social Welfare, Delhi Govt, All member of STF were present during course of action on 05/01/2017 at 10:00 AM (Copy of Meeting of Minutes is attached). Further in pursuance to the above, all the encroachments were removed from the Tahirpur Village.*

*So far as demolition of dangerous structures is concerned, the action shall be processed at appropriate level once such complaint is received to the Department from the authorized occupants of the Tenements.*

*4. Regarding infrastructure development for leprosy rehabilitation in Tahirpur, an amount of Rs. 4,75,82000 (Four crore seventy-five lakh eighty-two thousand) has been sanctioned by the department for wide range of services provided in the leprosy colony ranging from construction of toilets, boundary wall, rain water harvesting, garden development, improved water supply & drainage development of TCPC since 2017. Clearly indicating the intent of the department which is and always has been the welfare of LAPs.*

*Although, works like sanitation, security maintenance of roads, parks, street lighting, etc. of said colonies do not come under jurisdiction of Department of Social Welfare. These matters pertain to PWD, MCD, DJB or other related agencies.*

*Further, Public Works Department (PWD), GNCTD would give compliance of sanction order issued by*

*Department of Social Welfare. List of Sanction order is enclosed.*

*It is pertinent to mention that in the year 2018 various provisions under Bombay Prevention of Begging Act was repealed just to identify that begging is not a crime and hence in due course of time the institution namely Home for Leprosy & IB (HLTB)/ Home for Leprosy Affected Beggar's (HLAB) which was establish exclusively for Leprosy Affected Persons (LAPs)/ Leprosy Cured Person(LCPs) was notified as Old Age Home in order to integrate the home for disabled with normal OLD population.(Copy of Notification Enclosed).*

*In nutshell there was no system in place in the year 1981 when the concept of Rehabilitation Centre for leprosy was created by the Department for Leprosy Affected Person who migrated to Delhi from different parts of India in search of Social Security and mainly assembled in North East District of Delhi to raise their collective common issue. During the course of time the court has made various efforts as result of which in the year 1995 the Disability Act was promulgated to redress the problem of disabled identified that period which covered only 7(seven) types of disabilities.*

*However, In the year 2016 RPwD Act was again amended to redress the wider range of 21 (twenty-one) Disabilities including the issue of Leprosy Affected/Cured Person. It is worth mentioning that the Disability Commission is being successively appointed by the Government to look into the problems faced by the all categories of Disabled including LAPs/LCPs under the statutory provision of the RPwD Act 2016. ”*

13. Material on record further shows that CONT.CAS(C) No.224/2004 was disposed of *vide* Judgment dated 25.05.2017. The said Judgment notes

that the learned *Amicus Curiae* appointed in the case had given a suggestion of appointing a Committee comprising of Deputy Director, Department of Social Welfare, GNCTD and six other members. However, this Court added two more members to the Committee and directed that the Committee should be headed by Special Director, Department of Social Welfare, GNCTD, and Deputy Commissioner, Shahdara was also made a member of the Committee and the Committee was to meet once in two months.

14. Material on record indicates that leprosy is a curable disease and once the person is cured of the disease, steps must be taken to ensure that the person is rehabilitated. This Court is, however, not in a position to accede to the prayer made by the Petitioner for grant of title of land occupied by the persons staying in the leprosy colonies. The purpose of having leprosy colonies is for the benefit of leprosy affected persons and once a person is cured of the disease, he should be in a position to leave these colonies and steps must be taken to rehabilitate them. Title of land cannot be granted to such persons to permit them to continue in these colonies generation after generation even though the future generations will not be physically affected by the disease.

15. The very purpose of creating these colonies will get defeated if title of land is granted to persons who are living in these colonies and who are not affected by leprosy. This Court is in agreement with the Petitioner that leprosy affected persons are equal members of our society and discrimination against leprosy affected persons is clear violation of Articles 14 and 21 of the Constitution of India. An attempt, therefore, must be made to ensure that these persons are brought back to the mainstream. Granting them title deeds in these colonies is not the solution. Persons staying in these



colonies must be encouraged to come out of these colonies, and live a normal life and mingle with the mainstream.

16. Though this Court sympathises with the cause of the Petitioner, its hands are tied with regard to the prayer seeking grant of title. Grant of title deeds is not the remedy to the issue of encroachment. The Committee which has been set up by this Court in CONT.CAS(C) No.224/2004 has to ensure that there are no encroachments in these colonies. Further, the leprosy affected persons should be considered for appointment under the persons with disability quota, and people must be made aware and sensitised to ensure that the patients affected by leprosy are not discriminated against.

17. In view of the above, this Court is not in a position to accede to the prayer of grant of title of land which is being occupied by persons living in the leprosy colonies, i.e., Leprosy Complex Tahirpur. However, the MCD is directed to ensure that the leprosy patients who are residents of these colonies are not evicted and that there are no encroachments on the land.

18. The writ petition is disposed of, along with pending application(s), if any, with the above observations.

**SATISH CHANDRA SHARMA, CJ**

**SUBRAMONIUM PRASAD, J**

**FEBRUARY 20, 2023**

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