

CASE NO.:
Appeal (civil) 5793 of 2007

PETITIONER:
Shakur Basti Shamshan Bhumi Sudhar Samiti (Regd.)

RESPONDENT:
The Lt. Governor, National Capital Territory of Delhi and others

DATE OF JUDGMENT: 11/12/2007

BENCH:
S.B. SINHA & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 5793 OF 2007
(Arising out of SLP (C) No. 15784 of 2004)

S.B. SINHA, J.

1. The present controversy relates to a cremation ground known as 'Shakur Basti Shamshan Bhumi'. It is located in a village known as Shakur Basti in the town of Delhi.

2 Appellant herein is a society registered under the Societies Registration Act, 1960. It is said to be managing the affairs of the cremation ground being in charge and possession thereof. The village in question as also the adjoining areas viz. Rani Bagh, Rishi Nagar, Mohindra Park, Sant Nagar, Raja Park, Sri Nagar etc. are said to be inhabited by the displaced persons from Pakistan. This site in question was being used as cremation ground by the residents of the village as also the adjoining areas.

3. A land acquisition proceedings was initiated for acquisition of the said land on or about 26th December, 1964. An award was also published. The possession of the vacant land was admittedly taken. Despite acquisition of the said land unauthorized cremation of dead bodies continued.

4. It is not in dispute that pursuant to or in furtherance of the land acquisition proceedings a Notification was issued by the Delhi Development Authority declaring the said area to be the residential area. Some Group Housing Societies developed residential units thereat. A few cooperative group housing societies filed writ petitions before the Delhi High Court impleading inter alia the Delhi Development Authority and the Municipal Corporation of Delhi as parties-respondents therein praying inter alia for discontinuance of the said site as cremation ground. By judgment and order of 8th May, 1996 a purported observation was made that cremation of dead bodies was being made unauthorisedly on the land in question the relevant part whereof reads :-

" Learned counsel for respondent No.1 submits that it appears that on the land which has been placed at the disposal of DDA, cremation of bodies has been unauthorisedly started sometime in 1991. Even counsel for respondent no.3 has not disputed that the land in question on which bodies are being cremated is an unauthorized cremation ground. We direct respondents to ensue that till further orders the bodies are not cremated upon the land in question. The SHO of Police

Station, Saraswati Vihar is also directed to ensure compliance of the order."

5. The said order of the High Court was challenged by way of Special Leave Petitions before this Court and this Court on or about 17th June, 1996 passed the following order :-

"Issue notice in the special leave petitions.
Issue notice in the stay applications also.
In the meanwhile the direction of the High Court dated 8th May, 1996 restraining cremation of the dead bodies at the site in question is stayed. It is, however, directed that no construction, whether temporary or permanent, shall be raised at the site by any party till further orders by this Court."

6. By an order dated 13th January, 1997 the Special Leave Petitions were dismissed observing :-

"Learned counsel for the contesting respondent submits that the writ petition which was pending in the High Court has since been disposed of and since these special leave petitions were directed against the interim orders made in that writ petition, these special leave petitions have been rendered infructuous. Mr. Jaitley appearing for the petitioners does not dispute this position. The special leave petitions are dismissed as infructuous."

7. On or about June, 1998 the Municipal Corporation of Delhi issued a Public Notice that the cremation ground near Harsh Vihar had been closed with immediate effect and the new cremation ground at Beri Wala Bagh was commissioned for Public use henceforth.

8. In or about June 1998 'Aggarwal Samaj', Shakur Pur filed a writ petition raising objection against the opening of the abovesaid cremation ground at Beri Wala.

9. Several other proceedings were also initiated wherein the appellant herein was not impleaded as the party. An attempt made by the appellant to intervene in some of the said proceedings did not succeed.

10. A suit was filed by one Balvant Rai. It related to Khasra No.181/2. A prayer was made therein that the said cremation ground at Shakur Basti be retained.

11. A writ petition was also filed by Harsh Vihar Cooperative House Building Society and others inter alia on the premise that the decision taken for regularization of cremation ground at that place despite allotment of a separate site for establishment of an alternative cremation ground was invalid in law.

12. A representation was made by the appellant to the Lieutenant Governor of Delhi for allotment of the land in question in its favour. The said representation was said to have been allowed in terms of the order of the Governor dated 7th September, 2001, which reads :-

"Enclosed is a representation made before the Lt. Governor by the Shakur Basi Shamshan Bhumi Sudhar Samiti regarding retention of Shakur Basi Shamshan Bhumi at its existing site. The details are reflected, in the afore-mentioned representation. Lt. Governor has desired that MCD should officially take over the

cremation ground for which DDA would have to make a formal allotment to the MCD. Thereafter as discussed with Commissioner, MCD, Lt. Governor has desired that an MoU could be entered with the Shakur Basti Shamshan Bhumdi Sudhar Samiti for proper management. Action on these lines may kindly be taken."

13. Delhi Development Authority, pursuant to or in furtherance of the said order of the Lieutenant Governor addressed a letter to the Commissioner of Municipal Corporation of Delhi on 26th November, 2001 relevant part of which reads "-

"With reference to your letter dated xxxxxxxx on the subject noted above, I am directed to inform you that under the provisions of DDA (Developed Nazul Land) Rules, 1981 it is proposed to allot you on perpetual lease hold basis a plot of land measuring 1700 sq. mtr. For the purpose of Cremation Ground on the usual terms/conditions as given in the approved format of perpetual lease and the following conditions amongst others."

14. The Lieutenant Governor of Delhi reviewed his order on 23rd April, 2002 which was communicated to the appellant on 20th June, 2002.

15. However, after the aforesaid order of allotment was made, one Smt. Jyotsna Kashap a resident of an adjoining Kailash Colony approached the High Court by filing a writ petition which was numbered as CWP No.3612 of 2001. By an order dated 22nd July, 2002 a learned Single Judge of the High Court disposed of the said writ petition, the relevant part whereof reads as under :-

"It may be noted that certain representations were made to the Lt. Governor for continuing the Shakur Basti Land to be used as a cremation ground. It is now stated in the Court that the said representation has been rejected by the Lt. Governor and a copy of the communication dated 20.6.2002 is placed on record. In view of the aforesaid position all the public authorities who are respondents have agreed that the use of the land as a cremation ground has to be stopped.

In view of the aforesaid it is directed that respondent No.3 shall ensure that the land in question is not used as a cremation ground and remove unauthorised permanent or temporary structures constructed thereon. Respondent No.2 shall render police assistance as and when requisitioned by respondent No.3 to ensure the compliance of the order. The needful be done within a period of two months from today and compliance report be filed in the Court. The writ petition stands disposed of in the aforesaid terms."

Appellant, however, was not a party therein.

16. By an order dated 22nd July, 2002, a learned Single Judge of the High Court having regard to the orders passed by the Delhi High Court, some of which have been noticed by us hereinbefore, directed:-

"In view of the decision now finally taken by the Lt.

Governor that land at Shakur Basti is not to be used as a cremation ground and in view of the directions issued by this Court in CW 3612/2001 no further orders are called for in this writ petition and the same stands disposed of."

16. An LPA was filed by the appellant herein against the said order dated July 22, 2002 in CW No.591 of 2002 in which a Division Bench of the High Court passed the following order on 27th August, 2002 :-

"Counsel for the appellant says that the grievance of the appellant is that he had filed an application for impleadment in Civil Writ Petition NO.591/2002 but without taking any decision on his application, the writ has been disposed of, which has adversely affected the interest of the appellant. It is the appellant who had been agitating about this land since 1991. He would like to file review application or may file substantive writ petition, therefore, prays that while disposing of this LPA status quo order till Monday 2nd September, 2002 may be ordered to be maintained. In view of the statement of the counsel for the appellant, the appeal is dismissed as withdrawn. However, till 2nd September, 2002 order of status quo is ordered to be maintained."

17. We may also incidentally notice, although nothing much turns out of it, that a resolution was purported to have been passed on 4th October, 2002 by the Councillors to the effect that the Municipal Corporation of Delhi would carry out improvement and development of the Cremation Ground at its existing site only.

18. A separate writ petition was filed by the appellant wherein the aforesaid Smt. Jyotsna Kashyap and others, some of the cooperative group housing societies were impleaded as parties. It was marked as CWP No. 5567 of 2002. A learned Single Judge disposed of the said writ petition by an order dated 23rd October, 2002 which reads :-

"The grievance made in the present writ petition by the petitioner is that the order dated 20.6.2002 passed by the Lt. Governor allotting the site in question to the M.C.D. which was contrary to the earlier order dated 7.9.2001 directing the memorandum of understanding to be executed by the petitioner had been passed without any intimation to the petitioner and without the petitioner being heard.

Learned senior counsel for respondent No.3 D.D.A. states that the order was in fact passed on 23.4.2002 though D.D.A. communicated to the M.C.D. on 20.6.2002.

In view of the fact that the order dated 23.4.2002 communicated on 20.6.2002 to the M.C.D. had admittedly been passed without hearing the petitioner which seeks to modify the earlier order dated 7.9.2001, it is agreed by the respondents that the petitioner will be given a personal hearing and a fresh order shall be passed thereafter. The petitioner shall appear before the Lt. Governor on 8.11.2002 at 3.00 P.M. It will be open to the petitioners 5 to 10 can also appear before the Lt. Governor. All the parties will be given a personal hearing on the said date or any subsequent adjourned date and a reasoned order shall be passed within a period of two months thereafter. In view thereof the impugned order dated 23.4.2002 and the letter dated 20.6.2002 shall

not be given effect to. Needless to say that if any of the parties are aggrieved by the order passed by the Lt. Governor it will be open to them to impugn the same in accordance with law."

19. On the aforementioned basis a detailed representation was filed by the appellant before the Lieutenant Governor of Delhi wherein inter alia the following prayers were made :-

" It is therefore prayed that Your goodself may be pleased to :

a. first consider and decide the preliminary issues/objections raised by the applicant in the present application;

b. uphold that the order dated 7.9.2001 passed by your goodself and further hold that no interference with the said order is called for in view of the fact that no power of review is conferred on Your goodself;

c. uphold that the order dated 7.9.2001 passed by Your goodself and further hold that no interference with the said order is called for in the facts and circumstances of the present case;

d. make available to the applicant a copy of the purported order of cancellation/revocation of the order dated 7.9.2001;

e. grant opportunity to the applicant to bring additional facts and evidences on record to justify that the order dated 7.9.2001 passed by Your goodself is correct and valid in the facts and circumstances of the present case and calls for no interference.

f. Pass such other orders or directions as deemed fit in the facts and circumstances of the present case."

20. Allegedly prayer (d) was made therein in the said representation as the purported order of cancellation/revocation of the order dated 7th September, 2001 by order dated 23rd April, 2002 had not been received by the appellant.

21. The Lieutenant Governor heard all the concerned parties. In terms of an order dated 27th June, 2003 it was opined :-

" I have considered the contentions of Shakur Basti Shamshan Sudhar Samiti as well as the representation of the various Group Housing Societies.

The Shakur Basti Shamshan Sudhar Samiti has contended that the cremation ground has been in existence since the year 1955, in support of which they have submitted documents showing that cremations have been held at that site since then. The representatives of the Group Housing Societies have stated, on the other hand, that the land where the cremation ground is presently situated had been acquired by the Delhi Administration vide award No.1755 dated 26.12.1964 and that its physical possession was taken on 6.4.1965. The land was transferred to D.D.A. for development of Pitampura Residential Complex on 3.1.1968. As per the Zonal Development Plan of D.D.A the land use of the

site in question is for setting up of a local shopping centre, a primary school and residential group housing.

I have also gone through the judgments of the court of Sub-Judge Ist Class, Delhi, ADJ, the High Court and the Supreme Court on this matter. According to judgments the use of the land should conform to the zonal development plan and that the cremation ground should not be allowed to function from there. The High Court has further ordered that M.C.D. construct a cremation ground at Beriwalla Bagh, close to the Shakur Basti site.

The aforementioned facts were not in my knowledge when the representatives of the Shakur Basti Shamshan Bhumi first met me with their petition to allow the Shamshan Bhumi to function from the existing site. On the basis of the earlier representation and the facts then submitted, D.D.A. had been advised to make a formal allotment of the cremation ground to the M.C.D., after which M.C.D. was to conclude a MoU with the Samiti for proper management of the cremation ground. This advise was conveyed to D.D.A. and M.C.D. by my Secretary on 7th September, 2001. However, when the facts of the case and the orders of the High Court were put up on file, I had directed D.D.A. on 23rd April, 2002 to make immediate efforts to re site the Shamshan Bhumi and to put to use the land so vacated as per the layout plan."

22. A writ petition filed thereagainst which was marked as WP No.6855 of 2004 has been dismissed in terms of an order dated 7th May, 2004, the relevant part of which reads as under :-

" In compliance with these orders, another hearing took place before the Hon'ble Lieutenant Governor in which the petitioner was avowedly granted a hearing. By order dated 27.6.2003, the Lieutenant Governor has stated inter alia that "on hearing the contention of the two parties and keeping in view the judicial Orders, I reiterate my decision of 23rd April, 2002". Counsel for the Petitioner contends that by reiterating the order dated 23rd April, 2002 the situation has not been remedied as they are not even aware of the wording of that Order.

In my view, too much emphasis has been laid on the extracted words of the impugned order making a reference to the orders dated 23.4.2002. Of course, it would have been legally preferable not to needlessly mention those orders. The impugned Order dated 27.6.2003 takes in contemplation the Award No.1755 dated 26.12.1964 and the transfer of the land to the D.D.A. for setting up of a local shopping centre, a primary school and a residential group housing. It also notes the allotment of an alternate site at Beriwalla Bagh, close to the Shakur Basti site. If the entire order is read, it will be evident that the Hon'ble Lieutenant Governor had changed his earlier opinion in favour of the retention of the Shamshan Bhumi at its present site, looking towards the decisions given by this Court and the allotment of an alternate site. It is wholly immaterial whether the earlier order dated 23rd April, 2002 had been conveyed to the Petitioner. The thought process and the reasons for the decision of the Hon'ble Lieutenant Governor are fully contained in his Order dated

27.6.2003 which has been passed after the Petitioner was granted a hearing."

23. A writ appeal preferred thereagainst has summarily been dismissed by a Division Bench of the said Court by reason of the impugned judgment.

24. Mr. U.U. Lalit, learned senior counsel appearing for the appellant, would submit that ;

(i) in the absence of the order recalling order dated 7th February, 2001 passed by the Lieutenant Governor having been made available, the appellant's right to make an effective representation has been taken away.

(ii) If any reason had been assigned in the said order of 23rd April, 2002, the appellant would have been able to raise grounds assailing the same and as the same has not been supplied the impugned order must be held to be violative of principles of natural justice.

(iii) By reason of the said order which was the subject matter of the writ petition before the Delhi High Court, the Lieutenant Governor merely reiterated his earlier order, which is apparently bad in law.

(iv) The order dated 23.04.2002 being the primary order, the Lt. Governor could not have reiterated the same without considering the details of the representation made by the appellant dated 22.11.2002.

(v) Following the earlier order mechanically was an act of misdirection in law on the part of the Lt. Governor.

(vi) When the learned Single Judge of the Delhi High Court had directed the appellant to go to the Lt. Governor, it was bound to give effect to the judicial order upon consideration of the fact of the matter judiciously.

25. Mr. Vishnu B. Saharya, learned counsel appearing on behalf of the Delhi Development Authority (DDA), on the other hand, would submit that the site in question is no longer in use as a cremation ground. Drawing our attention to various orders passed by the Delhi High Court in a writ petition filed by Brahman Sabha Shakur Basti which was also claiming itself to be managing the affairs of the cremation ground as also the writ petition filed by various cooperative societies in whose favour allotment of land had been made by DDA, the learned counsel would contend that apparently dead bodies were being cremated at the said place unauthorisedly. The Lt. Governor having passed the order after taking into consideration all the contentions of the appellant, the High Court must be held to have been correct in passing the impugned order.

26. The fact that there existed a cremation ground is not in dispute. Furthermore the fact that the said land was acquired under the provisions of the DDA Act is not in dispute. The land in question was shown to be a residential area in the lay out plan. Why and how the award made in the Land Acquisition Proceedings was not and could not be taken to its logical conclusion has not been disclosed. According to the Municipal Corporation of Delhi as also DDA, the land was allotted for setting up of a local shopping centre, a primary school and a resident group housing society. There was also a direction to shift the cremation ground to Beri Wala Bagh, Shakurpur. Acquisition of the land for the purpose of DDA is not in question. An award was made, the effect whereof is that the land vested in the

Government of National Capital Territory of Delhi.

27. We have noticed hereinbefore that in the first round of litigation following the award made in the land acquisition proceedings, not only various restraint orders but also a closure order of the cremation ground was passed. Appellant might not have been impleaded as a party therein but it is difficult to conceive that it was not aware thereof. We have also noticed that another society presumably claiming itself to be managing the affairs of the said cremation ground had also filed a writ petition. The same was dismissed.

28. The second round of litigation started with challenging the order of closure dated 3.06.1998 passed by the High Court but by the appellant by filing a writ petition. The said writ petition was dismissed. Leaving recourse to its remedies on the judicial side, the appellant moved the Lt. Governor on administrative side. The land in question was directed to be allotted and on the basis thereof only the appellant had gone back to the High Court.

29. The learned Single Judge of the High Court who was a party to the earlier orders passed in writ petition very graciously directed the Lt. Governor to consider the matter afresh when it was brought to its notice that the earlier order dated 7.09.2001 stood rescinded by an order dated 23.04.2002.

30. The order directing allotment of land was not a judicial or a quasi-judicial order. It was an executive order. If an executive order had been passed in ignorance of various judicial orders passed by the High Court, the same could be reviewed. In view of the fact that the development plans have the force of a statute and the purpose for which the area was earmarked by the development authority therein we do not see any reason as to why the mistake committed by the Lieutenant Governor could not be rectified.

31. The purported letter proposing allotment of land by the Lt. Governor did not confer any legal right on the appellant. Only a desire was expressed by the said authority that the Municipal Corporation of Delhi should officially take over the cremation ground for which DDA was to make a formal allotment to it whereafter only a Memorandum of Understanding could be entered into by and between the appellant and the Commissioner, MCD. Action pursuant to or in furtherance of the said order was merely undertaken, but no final order was passed conferring any legal right upon the appellant. Apart from furnishing a copy of the said order of the Lt. Governor dated 7.09.2001 and a copy of the letter issued by the Competent Authority of DDA to the Commissioner, MCD dated 26.11.2001, no document was executed in its favour. For possessing a legal title, a deed was required to be executed by the MCD in favour of the appellant. Even such an allotment was carried into effect, the same would have been illegal being contrary to the development plan. Without a valid order for change in user, a site meant for a shopping complex, a school and user thereof for residential purpose, it could not have been directed to be used as a cremation ground. (See The Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. Vs. Sipahi Singh and Others (1977) 4 SCC 145.

32. It is one thing to say that the cremation ground could be directed to be continued at the old site but it is another thing to say that the appellant acquired any legal right over the land.

33. Harsh Vihar Cooperative House Building Society and Mrs. Jyotsna Kashyap also filed writ petitions before the Delhi High Court whereupon directions to close the cremation ground was issued. It may be that the matter was taken to the Appellate Court but the LPA was also withdrawn. The said order attained finality.

34. It is in the aforementioned situation when a writ petition was filed by the appellant in the Delhi High Court, viz., Civil Writ Petition No. 5567 of 2007, the order dated 23.10.2002 came to be passed. It only provided for a relief of grant of an opportunity of being heard before the Lt. Governor in favour of the appellant.

35. Appellant, as noticed hereinbefore, before the Lt. Governor as also before us, raised a question in regard to his competence to review his own order. The said contention proceeded on the premise that an order of allotment was required to be reviewed. Apart from the fact that the principle governing review of a judicial or statutory order has no application in the matter of administrative orders, the Lt. Governor, as noticed hereinbefore, in its order dated 7.09.2001 did not direct allotment of the land in favour of the appellant. He merely expressed his desire and directed the manner in which the same should be done.

36. The Lt. Governor acts as a statutory authority under the DDA Act. We are not sure as to whether he has any role to play in regard to the affairs of the Municipal Corporation of Delhi. If not, the said order was per se illegal.

37. It may be that in the writ petitions filed by Harsh Vihar Cooperative House Building Society and Mrs. Jyotsna Kashyap, the appellant was not a party but we may notice that even in the writ petition filed by the appellant questioning the order of the Lt. Governor dated 22.04.2003 (communicated to the appellant on 27.06.2003) they were not impleaded as respondents, although they were parties before the said authority.

38. The learned Subordinate Judge has also passed an order in a suit filed by one Balvant Rai in 1991. What was the nature of the decree passed by the Subordinate Judge has not been disclosed. The only contention raised in the list of dates is that the same was a collusive suit. With whom, the said Balvant Rai colluded or what was the nature and purport of the decree had not been disclosed. Some orders appear to have been passed also by the Additional District Judge. We do not know whether the Additional District Judge has passed the order in the same proceeding or in some other proceedings. If the judgments directing user of the land in conformity with the Zonal Development Plan and further directing that a cremation ground should not be allowed to operate become final, an order passed in ignorance thereof would be a nullity.

39. It appears from the order dated 22.04.2003 that group housing societies were also heard by the Lt. Governor. They evidently claimed their own rights thereupon. Even then, they were not impleaded as parties in the writ application. In their absence, the writ petition was not maintainable.

40. As a statutory authority, the Lt. Governor could not ignore the development plan. As the earlier order passed by a statutory authority was a nullity, an order recalling the same shall not be allowed to operate only because certain formalities (assuming there were some) in passing the same have not been complied with.

41. It is now well-known that a writ court in exercise of its jurisdiction under Article 226 of the Constitution of India need not quash an order if it gives rise to another illegal order or may quash both the orders.

42. In this view of the matter we are of the opinion that no case has been made out for interference with the impugned judgment.

43. For the reasons aforementioned, we do not see any infirmity in the impugned judgment. The appeal is dismissed with costs payable to D.D.A. Counsel's fee assessed at Rs.25,000/-.