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

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Pronounced on: 11.01.2021

+ W.P.(C) 8364/2018

**DELHI SAINIK COOPERATIVE HOUSING  
BUILDING SOCIETY LTD.(REGD.) AND ORS. .... Petitioners**  
Through Mr.Dushyant Dave, Sr. Adv. with  
Mr.Bahar U. Barqi, Advocate

Versus

**UNION OF INDIA AND ORS. .... Respondents**  
Through Ms. Maninder Acharya, ASG with  
Mr.Anurag Ahluwalia, CGSC, Mr.Abhigyan  
Siddhant, and Mr.Sharuya Jain, Advocates for  
Union of India/R-1  
Mr.Naushad Ahmed Khan, ASC(CIVIL), GNCTD  
Ms.Puja Kalra, Standing Counsel and Mr.Virendra  
Singh, Advocate for SDMC  
Mr.AjayVerma, Senior Standing Counsel with  
Ms.Ruchi Chopra, Advocate for DDA.  
Ms.Puja Kalra, Adv. for SDMC.  
Mr.Sumeet Pushkarma, Standing Counsel with  
Mr.Devanshu Lohiya, Advocate for Delhi Jal  
Board and Mr. L. L. Meena (E. E.)

**CORAM:  
HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J.**

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

“a) That this Hon’ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus directing

respondents, their servants and agents to grant all civic and other facilities to the petitioners which are available to other citizens occupying their land lawfully in the city of Delhi particularly in respect of supply of water, connection of sewage, drainage, provision for roads and for security etc. as early as possible and to continue to maintain the same.

b) That this Hon'ble Court may be pleased to issue a writ of prohibition or a writ in the nature of prohibition restraining the respondents, their servants and agents from levying any additional or extra charges from petitioners acknowledging their authorised status like other illegal colonies in any manner.

c) That this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus directing respondents, their servants and agents to include Defence Services Enclave area for the purpose of planned development in harmony with MPD-2020.

d) That this Hon'ble Court may be pleased to issue a writ of prohibition or a writ in the nature of prohibition restraining the respondents, their servants and agents in any manner treating the petitioners as illegal occupants in respect of their lands situated at Defence Services Enclave at Khanpur and Khirki Village and further prohibit them from acting in any arbitrary manner to demand any additional levies, charges etc. except those which are legitimate levied and paid by lawful occupants in Delhi.”

2. The case of the petitioners is that 53 of the petitioners before this court are veterans, decorated officers, war-widows and Armed Forces Personnel belonging to all the three wings who were allotted plots in question for residential tenements by respondent No. 1 pursuant to a scheme formulated by respondent No. 1 in 1961. The area occupied by the petitioners is about 65 acres in the area called “Defence Services Enclave”.

It is stated that they are legally authorised residents and must be recognized/acknowledged by every respondent herein. The allotment of plots was by the Society formed by the Ministry of Defence which culminated into proper sale deeds registered with the office of Sub-Registrar.

3. The narration of facts starts from 1961. It is stated that the then Defence Minister-Sh. V.K. Krishna Menon formulated a scheme in 1961 for creation of a chain of housing societies for resettlement of war-widows, disabled/decorated soldiers and other servicemen in most major cities. The Army Forces Personnel were informed about this by an Army Order dated 06.05.1961. It is stated that in a meeting in Delhi between the Raksha Mantri, the Home Minister and the Chief Commissioner of Delhi in 1965, the Ministry was advised that due to non-availability of land in Delhi as a special case, Ministry of Defence should purchase land in the green belt in South Delhi. Based on this advice, the Ministry of Defence through its Society purchased lands in the Revenue Estate of Khanpur and Khirkee after both these were notified as urban areas in 1963/1966. It is claimed that the petitioners are paying tax to MCD at urban rates and that subsequently, this was acknowledged as residential in the Master Plan of Delhi 2021. The petitioners' lands fall in Zone 'J' and all the lands are residential. It is further stated that appreciating that the lands allotted did not have a direct access from Mehrauli-Badarpur Road, the Ministry of Defence in 1970 took a rear step of getting a special sanction of the President of India for transfer of a strip of Defence land measuring 1.61 acres from Army Camping Ground, Khanpur to the Society to provide access to the members' plots. It is stressed that the Defence land is never sold or sold only under extremely exceptional

circumstances.

4. It is further stated that when the petitioners tried to settle on the plots allotted to them and submitted building plans to MCD/DDA/the Commissioner of Lands and Building for sanction. In large number of cases these organizations refused to acknowledge receipt of the building plans. Those that were accepted were never replied to in spite of numerous reminders.

5. The grievance of the petitioners is that despite repeated attempts since last 30 years, MCD has failed to provide a single facility to the petitioners till date under the garb of the petitioners allegedly being unauthorised. It is pleaded that such a stand of the authorities is completely untenable, unjust and illegal.

6. It is stressed that ex-servicemen resettled under this very scheme in many other stations in the country are living peacefully since the last 45 years. It is only in Delhi that war-widows and disabled/decorated ex-servicemen resettled under the Government of India mooted scheme have been harassed and denied essential basic amenities of water, electricity, sewer, road, etc. for the last 55 years. It is pointed out that the petitioners have participated in all the wars of 1962, 1965 and 1971 and have been decorated for the acts of valour on the battle field and awarded distinguished service medals for services recorded to the nation.

7. It is stated that having exhausted all avenues of administrative redressal for 30 years, the petitioners were compelled to file a writ petition being W.P.(C) No. 5804/2002 before this court on 11.09.2002. The Ministry of Defence in its affidavit dated 05.05.2003 in the said case had in para 8.2 stated as follows:-

“8.2 That in the present facts and circumstances, it is very clear that the lands were given to the Society for construction of residential houses for residential purpose so that the Armed Forces are able to rehabilitate themselves in a proper and official manner in terms of the Army Order of May 1961.”

8. This writ petition was disposed of on 11.02.2010 whereby the submission of Dr. M. Ramachandran, Secretary, Ministry of Urban Development who was present in the court was noted that a policy decision would be taken one way or the other by 31.12.2010:

i. Whether to regularise unauthorized colonies, that is, those inhabited by the affluent sections of society existing on public land as well as private land including Sainik Farms

ii. the terms and conditions on which regularization, if any, will be effected and,

iii. in the event of a decision being taken not to regularise Sainik Farms, the consequences thereof and further action on the decision.”

Dr. Ramachandran stated that the affidavit dated 05.05.2003 filed by the Ministry of Defence in W.P.(C) 5804/2002 would also be taken into consideration while framing the policy pertaining to Sainik Farms.

9. It is pleaded that despite the assurance of the Secretary, Ministry of Urban development, no steps have been taken and there is no end to the harassment being faced by the petitioners.

10. It is further pointed out that Delhi Jal Board in their affidavit dated 05.03.2010 in W.P.(C) 9540-51/2005 had assured this court that the acute shortage of water of the petitioners' colony would be solved and the water would be supplied from Malviya Nagar UGR which is under construction.

However, needful has not been done.

11. It is admitted that with relentless effort, the petitioners have been able to get BSES electricity connections, telephone lines and other infrastructural facilities.

12. It is stated that the petitioners' modest dwelling units which were built with lime and mortar only, due to cement control, have become old and are in urgent need of repairs. Roofs are leaking, floors are cracking and there is seepage in the walls. All the petitioners are old. The authorities including the local police do not allow the petitioners to repair/build their boundary walls. The petitioners' colony roads have become a thoroughfare for tens of thousands of people living in adjoining areas. This has also affected the security and the lands are open to encroachment.

13. The petitioners being aggrieved had no option but to file another writ petition being W.P. (C) 8276/2014 before this court where the following reliefs were sought:-

“a. Affirmation of authorised status as a Govt. approved resettlement scheme initiated in 1961 and issue suitable instructions to all concerned authorities for provision of all basic amenities like water, electricity, roads, sewerage, security, etc. which the Govt. is bound to provide at its expense, within a stipulated time bound period.

b. Provide relief to the original members of our society and their legal heirs, by giving us the authorised status of regularized colony without additional charges as we have been resettled under a Govt. approved scheme and most of area development has already been carried out by us at our cost since last fifty years. Any charges/cost levied on us would be grossly unjust and beyond our means. If levied, it would defeat the very purpose of the GOI Resettlement Scheme of relieving Defence Forces Personnel from mental agony and offering them

housing plots at very reasonable rates as stated by MOD in para 10 of their affidavit.

c. Immediate implementation of the orders of the Division Bench of Delhi High court dt. 12-04-2010 in W.P. (C) 9540-51/2005 for supply of water from Malviya Nagar UGR.

d. Direct the concerned authorities to notify building norms and frame a policy for the planned development of Defence Services Enclave in harmony with the MPD 2021.

e. Deemed sanctioned status of petitioners and its members existing dwellings in Defence Service Enclave, since they have been in existence for decades.

f. Early disposal, as justice has eluded us since last 50 years Many original allottees have passed away. In addition to widows and those physically disabled while fighting for the nation almost all of us at present are in our Seventies and Eighties, while some are in their nineties. We pray for relief and justice from the Honourable Court in our lifetime,”

14. On 04.04.2018, learned counsel appearing for the petitioners withdrew the petition with liberty to file detailed representations with respondent No. 4 and respondent No. 6. Pursuant to the said liberty, the petitioners submitted detailed representations to respondent No. 4 and respondent No. 6 on 20.04.2008. It is the grievance of the petitioners that despite the said representations filed before the said respondents, namely, Municipal Corporation of South Delhi and Delhi Jal Board, there has been no response. It is pleaded that the action of the said respondents is clearly contempt of court. It is in these circumstances, having lost of all hopes, the petitioners state that they have filed the present writ petition before court as they are being denied the basic amenities and the right to enjoy life with

dignity. Hence, the present writ petition.

15. Most of the respondents have filed their counter-affidavits. Delhi Jal Board, respondent No. 6 in its counter-affidavit has stated that the Defence Services Enclave is an unauthorised colony mentioned in the Registration No. 453 in the list of total 1639 unauthorised colonies which have been identified by the Urban Development Department, Govt. of NCT of Delhi. The Colony in question falls in the category of “Unauthorised Affluent Colony”. It is also stated that many of the occupants are not even ex-servicemen but are subsequent buyers. It is also stated that pursuant to the order of this court dated 04.04.2018 passed in W.P. (C) 8276/2014, the answering respondent had written a letter to the Department of Urban Development, Govt. of NCT of Delhi to know the present status of the area. In response, a letter was received on 25.05.2018 from the Department of Urban Development, Govt. of NCT of Delhi that under Clause 3.6 of the regulations for Regularization of Unauthorised Colonies dated 24.03.2008, unauthorized colonies inhabited by affluent class cannot be considered for regularization and development works can be carried out only in the colonies which are considered for regularization. It is stated that development work like laying water pipe lines in the area in question can only be executed by the answering respondent subject to clearance from the Urban Development Department, Govt. of NCT of Delhi. It is stated that permission for installation of four number tube wells have been given to the RWA and at present water is being supplied for drinking purpose through the existing four tube wells as an interim arrangement which is being maintained and regulated by the RWA.

16. A status report has also been filed by South Delhi Municipal



Corporation. The status report confirms that the Defence Services Enclave is an unauthorised colony and the respondent/SDMC is not carrying out any development work pertaining to it.

17. Respondent No. 2/Ministry of Housing and Urban Affairs, Govt. of India has also filed its counter-affidavit. It is stated that the petitioners had earlier also filed a writ petition being W.P.(C) No. 8276/2014. It is stated that the relief sought in the present writ petition is more or less is similar to the relief sought in W.P.(C) No. 8276/2014. In fact, this court by its order dated 04.04.2018 had allowed the petitioners to withdraw the said writ petition being W.P.(C) No. 8276/2014. It is further stated that the colony in question is an unauthorised colony and as per the regulations for regularization of unauthorised colonies, the orders for regularization have to be issued by Govt. of NCT of Delhi who have to also coordinate and supervise the entire process of regularization. The reliefs sought in the present writ petition, it is stated, fall within the jurisdiction of the local bodies, namely, DDA, South Delhi Municipal Corporation and Delhi Jal Board and that the answering respondent is only a performa party.

18. On behalf of Union of India, namely, Directorate General Resettlement, Department of Ex-Servicemen Welfare, Ministry of Defence, Govt. of India another counter-affidavit has been filed. Respondent No. 1 claims to be a performa respondent. It is stated that in 1961, a proposal was mooted to form co-operative housing societies in all the states. As a result of this initiative, Sainik Co-operative House Building Society was formed in Delhi. The lands were sold by the Society to allottees under individual registration of sale deeds. It is admitted that the lands purchased by the Society did not have a direct access from Mehrauli Badarpur Road. So as an

exception a strip of Defence land measuring 1.613 acres from Army Camping Ground, Khanpur was sold to the Society in September 1970 to provide access to the plots and to help the Society in resettlement of Armed Forces Personnel. Hence, it is concluded that the lands were given to the Society for construction of houses for residential purposes so that the Armed Forces personnel are able to rehabilitate themselves in a proper and official manner in terms of the Army Order of May 1961.

19. DDA has also filed a counter-affidavit which is a very short and cryptic affidavit which barely reiterates the submissions of the other respondents.

20. The Govt. of NCT of Delhi has also filed its counter-affidavit. In the counter-affidavit, it is stated that the Defence Services Enclave squarely clearly falls within the ambit of definition of an “unauthorised colony”. It is stated that the contention of the petitioners essentially is that the establishment of the petitioner Society was with the help and support of the Ministry of Defence and for the purpose of resettlement of war-widows, disabled/decorated soldiers and ex-servicemen. However, this itself does not bestow legitimacy upon the actions of the petitioner Society in setting up the colony. It is stated that no colony can be regarded as an “authorised colony” unless it is set up based on an approved lay out plan by the concerned agency.

It is further stated that the Society purchased the lands for its members pursuant to a meeting between the Defence Ministry, Home Minister and the Chief Commissioner of Delhi. However, the Minutes of the Meeting dated 10.05.1965 sets out that the petitioner Society cannot be given land for residential purposes, the purchase of lands by the petitioner Society in Delhi

will be confined to areas falling in and around the green belt of Delhi and will be for the purpose of farm houses within the agricultural area. It is stated that the allotment letter produced by the petitioners itself shows that the allotment was for the purpose of farm houses and not for residential purpose. However, the subject colony does not comprise of any farm house but of the residential houses.

It is stressed that no person has a vested right to claim regularization. Where any habitation/colony is unauthorised or contrary to the sanctioned plan/zonal plan/master plan, such habitation/colonies cannot claim regularization as a matter of right.

It is further stated that it is an admitted case that the petitioner society represents owners of only 54 plots out of 387 plots of the said colony. It is stated that it is an admitted case that the remaining members have sold their plots and do not own plots in the said colony any more. It is stated that an application was received for regularization of the colony in 2007-08. The application pertained to the entire 387 plots in the said colony.

21. I have heard learned senior counsel appearing for the petitioners, learned ASG for respondent/Union of India and learned counsel for the other respondents. The petitioners have also filed their written submissions.

22. Learned senior counsel for the petitioners has pointed out that the aim of the scheme was to ease the agony of Armed Forces Personnel by providing them housing plots at reasonable rates to enable them to lead a peaceful retired life. Further, it was on the advice of the Home Minister and the Chief Commissioner of Delhi, the Ministry of Defence bought agricultural land from farmers in South Delhi. It is hence evident that the plots were allotted to the petitioners for residential purposes only. In fact,

Armed Forces Personnel resettled under this very scheme in many other cities in India are leading a peaceful retired life in their residential houses since the last fifty years. It is further pointed out that the building plans submitted to the concerned agencies for sanction were neither refused nor acknowledged in spite of numerous reminders. Since the applications were not turned down, a deemed sanctioned status of the dwellings in existence is there in view of the lapse of more than 40 years. It is stressed that the petitioners have given their best years in the service of the nation. They have participated in the wars of 1962, 1965, and 1971 and have been awarded medals for acts of valour. Having been resettled there over 50 years ago, the petitioners who are at the fag end of their lives are entitled to basic amenities.

23. Reliance is also sought to be placed on the counter affidavit filed by the Director General of Resettlement, Ministry of Defence in W.P.(C) No.5804/2002 where the affidavit notes that the lands were given to the Society for construction of houses for residential purposes so that Armed Forces Personnel are able to rehabilitate themselves in a proper and official manner. A reference was also made to the order of the Division Bench dated 25.03.2015 passed in W.P.(C) No.8276/2014.

24. Learned Additional Solicitor General has stressed that the colony is unauthorised and cannot be regularised as is sought to be urged. It was also stressed that the present writ petition does not lie as a similar writ petition had been filed earlier being W.P.(C) 8276/2014 which was withdrawn on 04.04.2018. Another writ petition seeking the same reliefs would not lie.

25. Learned counsel appearing for the Govt. of NCT of Delhi has stressed that the colony as per the policy of the Govt. of NCT of Delhi cannot be

regularised.

26. The first thing that strikes the court is that the writ petition seems to have completely ignored that the area in question as per the stipulated regulations is for agriculture purposes.

This is also apparent from Annexure P-3, which is a copy of the sale deed executed sometimes in 1993 by Delhi Sainik Cooperative Housing Building Society Ltd. in favour of Col. A.K.Pandita. The third last para of the said document clearly states that the land is an agricultural land and is being used only for agricultural purposes.

The counter affidavit of Delhi Jal Board clearly states that the Defence Services Enclave is an unauthorised colony mentioned in Registration No.453 in the list of total 1639 unauthorised colonies, which have been identified by Urban Development Department, Govt. of NCT of Delhi. South Delhi Municipal Corporation also in its counter affidavit has stated that the Defence Services Enclave is an unauthorised colony and SDMC is not carrying out any development work pertaining to it. Similarly, Govt. of NCT of Delhi in its counter affidavit also states that Defence Service Enclave is an unauthorised colony. It has been clarified that the pleas of the petitioners to the contrary are misplaced as no colony can be regarded as authorised colony unless it is set up based on an approved layout plan by the concerned agency. The said counter affidavit also relies upon the letter of allotment produced by the petitioners from which it is clear that the allotment was made for the purpose of farmhouses and not for residential purposes.

Merely because the petitioners were allotted the plots cannot be a ground to insist that the area is for residential purposes. The contention of

the petitioners to the contrary claiming that the area is a residential area is a misplaced contention.

27. In this context, reference may be had to Sections 7, 8(1) and 14 of the DDA Act, which read as follow:-

“7. (1) The Authority shall, as soon as may be, carry out a civic survey of, and prepare a master plan for, Delhi.

(2) The master plan shall—

(a) define the various zones into which Delhi may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and  
(b) serve as a basic pattern of frame-work within which the zonal development plans of the various zones may be prepared.”

“8. (1) Simultaneously with the preparation of the master plan or as soon as may be thereafter, the Authority shall proceed with the preparation of a zonal development plan for each of the zones into which Delhi may be divided.  
.....”

“14. After the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan:

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for end to which it is being used upon the date on which such plan comes into force.”

28. Hence, as per Section 7 of the said Act, DDA has to prepare a Master Plan for Delhi which will indicate the manner in which the land in each zone is proposed to be used. Further, Zonal Development Plans are to be prepared which will indicate the aspects stated in Section 8 of the said Act. As per Section 14 of the said Act, no person shall use any land in a particular zone otherwise than in conformity with the plan.

29. Nowhere at any stage has it seriously been contended by the petitioners that the area of the plots in question falls in the area which as per the Master Plan/Zonal Development Plan have a residential user. Some bald pleas have been made that the area is residential under Master Plan 2021 but no efforts was made to back this plea from the concerned documents. It is manifest that the area as per the plans is for agricultural use. Further, all the respondents have described the colony in question as an unauthorised colony.

30. Given the above facts, it would follow that the plea raised by the petitioners about being a residential colony does not have any basis whatsoever.

31. However, the matter cannot be put to rest given the peculiar facts and circumstances of this case which warrant a close look. There are certain admitted facts in this case which warrant a close look. The scheme under which the land was allotted to the petitioners had envisaged giving lands for residential purposes to members of the Armed Forces. Nobody has argued to the contrary that in other towns, other than in Delhi under the same scheme defence personnel were given property/land for the purpose of construction of the residential houses.

32. The Ministry of Defence in W.P.(C) 5804/2002 had filed a counter

affidavit where the following averments were made:-

“11. That in the present facts and circumstances, it is very clear that the lands were given to the Society for construction of residential houses for residential purpose so that the Armed Forces are able to rehabilitate themselves in a proper and official manner in terms of the Army Order of May 1961.”

33. It is clearly the acknowledged case of the Ministry of Defence that the lands were given to the Society for construction of houses for residential purposes.

34. I may also note the two orders of the Division Benches which are relevant herein. On 11.02.2010 in W.P.(C) 5804/2002, this court passed the following order:-

“Mr. Ramchandran, Secretary in the Ministry of Urban Development is present in Court pursuant to our order dated 28th January, 2010.

He says that there a typographical error in paragraph 3(vi) of his affidavit dated 8th February, 2010. He seeks leave to correct the typographical error.

Leave granted.

Mr. Ramchandran assures this Court that a policy decision will be taken one way or the other by 31st December, 2010:

i. whether to regularise unauthorized colonies, that is, those inhabited by the affluent sections of society existing on public land as well as private land including Sainik Farms,

ii. the terms and conditions on which regularization, if any, will be effected and,

iii. in the event of a decision being taken not to regularise Sainik Farms, the consequences thereof and further action on the decision.

Mr. Ramchandran says that affidavit dated 5th May,



2003 filed by the Ministry of Defence in WP(C) No.5804/2002 will also be taken into consideration while framing the policy pertaining to Sainik Farms.

In view of the statement of Mr. Ramchandran, nothing further survives in the matter. It is, accordingly, disposed of.

It is clarified that the earlier orders passed by this Court have not been vacated with the disposal of the writ petition.”

No party has pleaded that a policy decision was taken pursuant to the above direction dated 11.02.2010.

35. Similarly, in W.P.(C) 8276/2014 on 25.03.2015, the Division Bench passed the following order:-

“The petitioners’ society and its members are stated to be either Armed Forces Officers or War Widows or descendants of Armed Forces Officers. A list of the allottees/dependents owning the plots in the area known as Defence Services Enclave has been supplied to us. It is a list of 54 persons. The said list is taken on record. A copy of this list is given to the learned counsel for the Central Government.

The petitioners seek regularisation of their colony. We are of the view that the petitioners in this case are to be treated differently from the persons who are residing in Sainik Farms which is the subject matter of WPC 1145/2014. The petitioners in the present petition belong to an entirely different class and category of persons and prima facie cannot be termed as affluent persons. It is also pointed out by the learned counsel for the petitioners that the land which has been allotted to the petitioners was allotted by the Central Government.

It is, therefore directed that the Central Government should take a clear decision on regularising Defence Services Enclave before the next date of hearing.”

36. It is manifest from a reading of the above two orders that the Division Bench of this court took the view that the petitioners are to be treated differently from the persons residing in Sainik Farms which is the subject

matter of another writ petition. The court noted that the present petitioners belong to an entirely different class and category of persons and *prima facie* cannot be termed as affluent persons. Thereafter, a clear direction was passed to the Central Government to take a clear decision on regularising Defence Services Enclave before the next date of hearing. Again, no progress appears to have been made despite the said directions of this court.

37. There is another aspect which is relevant, namely, the fact that the plots and lands were allotted to the petitioners sometimes in 1970s. The sale deed which is Annexure P-3 to the writ petition is of 1983. Hence, roughly 40 to 50 years have passed since the petitioners have been in occupation of the lands in question and have been using it for residential purposes despite the colony being “unauthorised colony”.

38. I also cannot help noticing that the petitioners are all retired defence personnel who have devoted the most productive period of their lives defending the nation’s borders and performing other dangerous and difficult tasks normally performed by defence service officers.

39. Keeping in view the above facts and circumstances, in my opinion, the respondents are duty bound to take an appropriate decision based on the cogent facts regarding the status of the said area known as “Defence Services Enclave”. I reiterate the directions made by the Division Bench on 25.03.2015 in W.P. (C) 8276/2014 which read as follows:-

“It is, therefore, directed that the Central Government should take a clear decision on regularising Defence Services Enclave.....”

40. In view of the above, I request Secretary, the Ministry of Defence/respondent No. 1 to convene a meeting of functionaries who can

take a decision in terms of the above directions of the court. If necessary, the concerned Secretary, Ministry of Urban Development/respondent No. 2 and the Chief Secretary, Govt. of NCT of Delhi may form part of the Committee. Such other officers may be nominated to the Committee as the Secretary, respondent No. 1 may deem necessary. The said Committee so constituted by the Secretary, respondent No. 1 is requested to take an appropriate decision as spelt out herein as per law expeditiously preferably within four months from today. The decision so taken shall be duly communicated to the petitioners.

41. There is another aspect which I would also like to touch upon. One of the pleas raised by the petitioners is that they have been deprived of the basic civic amenities, namely, drinking water, sewerage, etc. They have managed to get electricity connections from the concerned distribution company-BSES Rajdhani Power Ltd.

42. As far as drinking water is concerned, it has been stated in the counter-affidavit of Delhi Jal Board that the development work like laying of water pipeline in the area in question can only be executed by the said respondent subject to clearance from the Urban Development Department, Govt. of NCT of Delhi. It has also been stated that as the colony is unauthorised in this case, permission for installation of four number tube wells has been given to the RWA and at present, water is being supplied for drinking purposes through the existing tube wells as an interim arrangement. The said arrangement is said to be maintained and regulated by the RWA.

43. It is settled position of law that an individual has a right to access to drinking water in quantum and quality equal to his basic needs. In this context reference may be had to judgment of the Supreme Court in the case

of *A.P. Pollution Control Board II vs. Prof.M. V. Nayudu (Retd.) & Ors., (2001) 2 SCC 62* where the Supreme Court held as follows

“3. Drinking water is of primary importance in any country. In fact, India is a party to the resolution of the UNO passed during the United Nations Water Conference in 1977 as under:

“All people, whatever their stage of development and their social and economic conditions, have the right to have access to *drinking water* in quantum and of a quality equal to their basic needs.”

Thus, the right to access to drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean drinking water to its citizens.

4. Adverting to the above right declared in the aforesaid Resolution, in *Narmada Bachao Andolan v. Union of India* [(2000) 10 SCC 664 : (2000) 7 Scale 34] (Scale at p. 124 : SCC p. 767, para 248), Kirpal, J. observed:

“248. Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India....”

44. Clearly, it is settled legal position that right to access to drinking water is fundamental to life and there is a duty of the State under Article 21 of the Constitution to provide clean drinking water to its citizens. In the present case, the petitioners have been staying in the said area for the last 50 years. Admittedly, the respondent Delhi Jal Board is supplying drinking water to various other unauthorised colonies. This court in W.P. (C) 8276/2014 on 25.03.2015 has held that the petitioners in the present case belong to an entirely different class and are to be treated differently from the persons who are residing in Sainik Farms. Further, the petitioners in my

opinion cannot be deprived of a right to access to drinking water merely on the ground that it is an unauthorised colony. The petitioners have been residing in the said area for the last 50 years and cannot continuously be deprived of this right to access to drinking and portable water.

45. In the light of the above, I direct the respondent Delhi Jal Board to make an appropriate scheme as per their normal procedure for supply of portable drinking water to the 54 petitioners in accordance with law. The scheme shall be framed and implemented expeditiously preferably within 9 months from today.

46. Nothing further survives in this petition. The same is accordingly disposed of with the above directions. Pending applications, if any, also stand disposed of.

**JAYANT NATH, J**

**JANUARY 11, 2021/rb**

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