

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

+ LPA 428/2006

% **Date of decision : 1st April, 2008**

Smt.Shammi Madan Appellant
Through Mr.R.K. Saini

versus

Gaon Sabha, Nangali Sakharavati & Ors Respondents
Through Mr.Sanjay Poddar, Advocate for L&DO
Mr.V.K. Tandon, Advocate for R-1-4.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

DR. MUKUNDAKAM SHARMA, CJ :

1. This appeal is directed against the judgment and order dated 12th August, 2004 whereby the learned Single Judge dismissed the writ petition filed by the appellant holding that the appellant and the other two persons, who had purchased parts of khasra No.12/5, have not sought partition and that in the revenue records the holding continues to be one, and consequently erection of partition wall on the land in

question resulted in plots being carved out because of which the provisions of Section 81 are contravened. The aforesaid findings and the conclusions arrived at by the learned Single Judge are under challenge in this appeal on which we have heard the learned counsel for the parties.

2. The appellant has unsuccessfully approached various revenue courts which recorded a uniform finding of fact holding that the provisions of Section 81 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as 'Act') are violated by the appellant and, therefore, the reliefs sought for by the appellant were rejected by all the revenue courts by their orders which are upheld by the learned Single Judge under the impugned judgment and order. A notice dated 9th August, 1997 was issued to the appellant in which it was recorded that the land belonging to the appellant i.e. 1 bigha and 2 biswas comprised in khasra No.12/5 in the revenue estate of Village Nangli Sakrawati was being put to non-agricultural use and, therefore, there was contravention and violation of the provisions of Section 81 of the Act. The appellant was directed to show cause as to why the said land be not vested in the Gaon Sabha.

3. The appellant submitted his reply dated 1st December, 1997 wherein the appellant did not deny the fact of purchasing land measuring approximately 1000 sq. yds, but denied putting the said

land to non-agricultural use.

4. After considering the reply submitted by the appellant, the Revenue Assistant proceeded to consider the matter and passed an order on 29th July, 1998 holding that there was violation and contravention of the provisions of Section 81 of the Act, and vesting the land in the Gaon Sabha of Village Nangli Sakrawati in terms of the provisions of Section 81 of the Act. The appellant challenged the said order by filing an appeal before the Deputy Commissioner (District South West). The said appeal was considered and was dismissed by order dated 5th April, 2001 as against which a revision was filed by the appellant before the Financial Commissioner, who dismissed the said revision petition by an order dated 4th July, 2002.

5. Being aggrieved by the aforesaid orders passed by the various revenue authorities, the appellant filed a writ petition in this Court, which was dismissed by order dated 12th August, 2004 as against which the present appeal has been preferred.

6. Counsel appearing for the appellant drew our attention to the notice issued by the Revenue Assistant and also the report submitted by the Halka Patwari dated 27th December, 1996 in support of his submission that all the orders are required to be set aside and quashed. It was submitted that in the report of the Halka Patwari dated 27th December, 1996, which was stated to be the basis of issuing

the aforesaid show cause notice, the Halka Patwari had not stated that the appellant had constructed any boundary wall. It was also submitted that the statement recorded in the said report to the effect that the appellant had constructed a road is incorrect, as it is not the appellant but the Authorities which had constructed the road in front of the appellant's land, for which action the appellant cannot be held responsible. During the course of his submissions, he also made reference to the khasra Girdawari for the year 1997-98 i.e. after the purchase of the land by the appellant, wherein, it is shown that the aforesaid land of 1000 sq. yds. had been used for the purpose of bajra cultivation. It appears to us that similar contentions were raised by the appellant even before the revenue authorities and also in the reply submitted by her to the show cause notice.

7. A reference to the order passed by the Deputy Commissioner (District South West), which was the first appellate authority, would indicate that there was originally a land holding which was purchased by several persons including the 1000 sq. yds. purchased by the appellant. These purchasers got the said land holding plotted amongst themselves, and each one of them is separately occupying his/her share by erecting a boundary wall. A close analysis of the order of the first appellate authority, would show that the appellant had relied upon the khasra Girdawari for the year 1997-98 in order to establish that the

land was being used for agricultural purposes only and had never been used for non-agricultural purposes as is sought to be made out. The land was purchased by the appellant in 1996 whereas the aforesaid document was for the year 1997-98, which is subsequent to the date of purchase. The appellant had purchased only 1000 sq. yds. of agricultural land and all the purchasers of the entire land are occupying the land independently, partition walls have been constructed by the other two purchasers and, therefore, the plot of the appellant measuring 1000 sq. yds. is identifiable and is independent. The specific case of the appellant is that she is using the said land only for agricultural purposes, which stands belied by the size of the plot, which is too small for the purpose of carrying out any agricultural activity. It is not possible to carry out any agricultural activity within the said small piece of land. These are also the findings of all the three revenue courts.

8. The inspection report of the Patwari dated 27th December, 1996 indicates that the road had been constructed in the entire land purchased. The said findings are findings of fact, and sitting as an appellate court we cannot re-appreciate the evidence to come to a finding that the aforesaid road was not constructed by the appellant, but was constructed by some authorities. The report of the Halka Patwari and the findings recorded thereon by the Revenue Courts as

also by the learned Single Judge on the basis of evidence placed on record cannot be said to be in any manner erroneous. Photographs placed on record by the appellant also do not show that any kind of agricultural activity was being carried out in the aforesaid land and that the said road was not constructed by the appellant and was constructed by some authorities. On the contrary, the photographs reveal that the plotting of the land had already been done by erection of the boundary walls. The said photographs also establish that no agricultural activity as claimed and as shown in the khasra Girdawari exists on the said land and, therefore, no reliance could be placed on the said khasra Girdawari.

9. The Sub Divisional Magistrate also submitted a fresh report pertaining to the land after carrying out inspection under his supervision, which report was filed under the signature of the Revenue Assistant along with an affidavit dated 7th May, 2004. The said report, which was filed in the Writ Court, revealed that khasra No.12/5, measuring 4 bigha and 8 biswas, was sold to three persons, and that at the site boundary walls had been constructed, which had resulted in the land being segregated into three plots. They had not sought any partition of the land from the revenue authorities, but had plotted the land by making construction of boundary walls. The said report, which was called for by the Writ Court and submitted by the Sub Divisional

Magistrate, was relied upon by the learned Single Judge for coming to the conclusion that the land was plotted and that there was construction in the said land, and also that there was violation and contravention of the provisions of Section 81.

10. If we allow such sort of activity being carried out, the intention of bringing the Land Reforms Act would have no meaning and the aforesaid provisions would prove to be nugatory. One of the Division Benches of this Court in the case of **Sahib Singh v. The Lt. Governor of Delhi and Ors.** reported in 2007 III AD (DELHI) 125 has also held that the Act seeks to do away with the uneconomic holdings of small farmers in the sense that it seeks to prevent the fragmentation of land holdings, which might result in the holdings being reduced to uneconomic ones. We may also appropriately refer to the decision of the Supreme Court in **Gaon Sabha and another v. Nathi and Others**, 110 (2004) DLT 549 (SC). In paragraph 10 and 11 of the judgment, it was stated thus:

“10. The effect of Section 154(1) is that all lands and all other kinds of properties enumerated therein shall vest in the Gaon Sabha on the commencement of the Act, with an exception that land for the time being comprised in any holding or grove shall not so vest and in such land in view of Section 4, Bhumidhar's or Asami's right would accrue. The proprietors ceased to exist with effect from the commencement of the Act. Ownership rights have also been conferred over all private wells in or outside holdings, tanks, groves and Abadis, all trees in abadi and all buildings situated within the limits of an estate belonging to or

held by a proprietor tenant or other person by virtue of Section 8 of the Act. The scheme of the Act and also the creation of rights thereunder has been examined by this Court in **Hatti v. Sunder Singh**, 1970 (2) SCC 841, and relevant part of para 3 of the Report where this matter has been discussed is being reproduced below:

“..... Sections 6, 11, 13 and 154 of the Act read together, thus, show that, after the Act came into force, proprietors of agricultural land as such ceased to exist. If any land was part of a holding of a proprietor, he came a Bhumidhar of it. If it was a part of a holding of some other person, such as a tenant or a sub-tenant etc., he became either a Bhumidhar or an Asami, whereupon the rights of the proprietor in that land ceased. Lands, which were not holdings of either the proprietor or any other person, vested in the Gaon Sabha.....”

11. A Division Bench of Delhi High Court (Prakash Narain, C.J. and S.S. Chadha, J.) in **Nathu v. Hukam Singh**, 21 (1982) 219 = AIR 1983 Delhi 216, examined the provisions of the Act in considerable detail. The Bench took note of the Statement of Objects and Reasons for making the Act which is as under:-

.....

The Bench then held that the proprietors of agricultural land ceased to exist and new classes of tenures known as Asami and Bhumidhar came into existence after the commencement of the Act. Para 8 of the report is being reproduced below:

“..... Except to this limited extent of certain rights in private wells, trees in abadi and buildings, the proprietors of agricultural land as such ceased to exist after the Act came into force.”

Therefore, the legal position is absolutely clear that a person can be either a Bhumidhar or an Asami of the agricultural land in a village. He can also be an owner of the property of the type which is enumerated in Section 8 of the Act, like private wells, tanks, groves, Abadis, trees and buildings. Except for these, all other kinds of lands and property would vest in the Gaon Sabha. The proprietors and the concept of proprietors of land stands totally abolished with the enforcement of the Act. The respondents neither claimed to be Bhumidhar nor an Asami of the land which has been acquired. The acquired land does not come within the purview of Section 8 of the Act. In such circumstances the only inference possible is that the land stood vested with the Gaon Sabha on the date of the commencement of the Act and it was the Gaon Sabha which was the owner thereof and was entitled to receive the entire amount of compensation.”

11. In the light of the aforesaid observations, we find no infirmity in the orders passed by the revenue courts and the Learned Single Judge. The appeal, therefore, has no merit and is dismissed.

CHIEF JUSTICE

REVA KHETRAPAL
JUDGE

1st April, 2008
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