

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 1983/2007**

Date of decision : 31.08.2009

IN THE MATTER OF :
RAMPAL & ORS.

..... Petitioners

Through: Ms. Geeta Mehrotra, Advocate

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Som Dutt Kaushik, Advocate for
GNCTD.

Mr. Sube Singh, Advocate for R-3 to R-8.

Mr. Ved Pal Rana, Advocate for R-9.

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

1. Whether Reporters of Local papers may be allowed to see the Judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

HIMA KOHLI, J. (ORAL)

1. By the present writ petition, the petitioners have assailed the order dated 18.01.2007 passed by the Financial Commissioner on a revision petition filed by them under Section 187 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as '**the Act**'), against the order dated 03.08.2001 passed by the Revenue Assistant/SO(C), Narela, Delhi. Vide order dated 03.08.2001, the Revenue Assistant directed restoration of the

physical possession of the land, bearing Khasra No. 1/24(1-4), 1/26(0-4), 139(3-8) and 146)(0-3) measuring 4 *Bighas* 19 *Biswas* in village Budhpur (Bijapur), Delhi, (hereinafter referred to as 'the subject land') handed over to the petitioners on 21.04.2001, back to respondent No. 9, Yash Pal Mahendru, on an application filed by him under Order 21 Rules 99, 100 and 101 read with Section 151 CPC.

2. By the impugned order dated 18.01.2007, the Financial Commissioner dismissed the revision petition of the petitioners by holding that the petitioners had not placed any document on the record, which indicated that they were in possession of the subject land, when the order dated 11.06.1990 was passed by the Financial Commissioner on an earlier revision petition preferred by the petitioners, or to show that they were dispossessed between the period June 1990 and the year 2001, till the time they were put in possession on the basis of an order dated 08.02.2001, passed by the Revenue Assistant, directing warrants of possession to be issued in favour of the petitioners. The Financial Commissioner, therefore, arrived at the conclusion that the order of the Revenue Assistant dated 03.08.2001 impugned before him, was well reasoned and that no ground was made out by the petitioners, either on the basis of the records or otherwise, which warranted interference with the said orders. Aggrieved by

the said order dated 18.01.2007, the petitioners have preferred the present writ petition.

3. Though written synopsis was filed by the parties, as lengthy arguments have been addressed by both the sides without adverting to them, this court has also confined itself to the submissions made by the counsels for the parties while disposing of the present petition. Considering the fact that the issue arising for consideration in the present writ petition has its seeds in the year 1984, it is necessary to recapitulate the relevant dates and events which are as follows.

4. On 10.07.1984, an application was filed by respondents No. 3 to 8 before the SDM under Section 85 of the Act, claiming *Bhumidari* rights in respect of the subject land. On 29.05.1986, the SDM passed an order declaring respondents No. 3 to 8 as *Bhumidars* of the aforesaid land. On 06.09.1986, the petitioners filed an application seeking setting aside of the aforesaid *ex parte* order dated 29.05.1986. Prior thereto, on 17.11.1985, a notification for consolidation proceedings was issued in respect of village Bijapur, which were completed on 18.06.1990. On 09.07.1986, three sale deeds were executed by respondents No. 3 to 8 in favour of respondent No. 9. Relying on the aforesaid sale deeds, respondent No. 9 approached the

revenue authorities for mutation of the subject land in his favour, which was got mutated on 29.07.1986.

5. On 18.12.1986, an application was filed by the petitioners under Order 39 Rule 1 and 2 CPC, seeking to restrain respondents No. 3 to 8 from interfering in the peaceful possession of the subject land. In the very next month, on 21.01.1987, the petitioners filed an application before the Consolidation Officer to the effect that they were in possession of the land in question. In the same application, the petitioners also sought to safeguard their interest and requested insertion of a note in the consolidation papers that the subject land was with them.

6. On 13.03.1987, another application was filed by the petitioners before the Additional Collector, Delhi for transfer of the proceedings to the Revenue Assistant/Settlement Officer on the ground that the village was under consolidation. The said application of the petitioners was allowed on 08.04.1987. On 30.06.1987, the Revenue Assistant/SO passed an order restraining respondents No. 3 to 8 from transferring or selling the subject land, during the pendency of the proceedings initiated by them under Section 85 of the Act. On 09.02.1990, the Revenue Assistant/SO rejected the application filed by the petitioners seeking setting aside of the *exparte*

order dated 29.05.1986. Aggrieved by the aforesaid order, the petitioners preferred a revision petition on 19.03.1990 before the Financial Commissioner under Section 187 of the Act. On 11.06.1990, the Financial Commissioner allowed the revision petition of the petitioners and set aside the order of the Revenue Assistant/SO dated 29.05.1986, as also the *exparte* proceedings and the final order of declaration of *Bhumidari* rights in favour of respondents No. 3 to 8 and further directed the trial court to conduct *de novo* trial of the application filed by respondents No. 3 to 8 under Section 85 of the Act. After remand, the said proceedings are stated to be pending till date.

7. After a lapse of about nine years, on 29.04.1999, the petitioners filed an application before the Revenue Assistant, to whom the matter was remanded, for implementation of the order dated 11.06.1990, passed by the Financial Commissioner. On 31.07.1999, the aforesaid application of the petitioners was allowed with the directions that the names of the petitioners be included in the revenue records, till a final decision takes place in the pending proceedings under Section 85 of the Act. On 22.08.2000, the Revenue Assistant passed an order directing that the names of the petitioners be included as *Bhumidars* against new Khasra numbers allotted in lieu of the old Khasra numbers. On 01.11.2000, the petitioners filed an

application before the Revenue Assistant/SO for possession of the subject land. On 08.02.2001, warrants of possession were directed to be issued in favour of the petitioners. On the basis of the said warrants of possession, an order dated 21.04.2001 was passed by the Revenue Assistant/SO(C) directing the SHO of the area to give necessary police assistance to the revenue officials on 27.04.2001 for handing over possession of the subject land to the petitioners, whereafter the said warrants of possession were duly executed in favour of the petitioners.

8. Immediately thereafter, on 04.05.2001, respondent No. 9 filed an application before the Revenue Assistant/SDM under Order 1 Rule 10 CPC, for being impleaded in the pending proceedings under Section 85 of the Act. Respondent No. 9 also filed an application dated 11.05.2001, before the Revenue Assistant/SO(C) for restoration of physical possession of the subject land. The said application was allowed by the Revenue Assistant/SO(C), Narela, Delhi, by passing a detailed order dated 03.08.2001, holding that respondent No. 9 was entitled to restoration of physical possession of the land, which was earlier handed over to the petitioners vide order dated 08.02.2001. The operative para of the order of the Revenue Assistant/SO(C) is reproduced herein below:-

"I have perused the entire record of this case file and heard submissions made by Ram Pal and his son and counsel for applicant Shri Yash Pal Mahendru. This case was remanded back to this Trial court by the court of Financial Commissioner for holding de-novo trial of the petition filed by Shri Ran Singh U/s 85 of DLR Act after giving opportunity of hearing to all the parties. No order of giving possession to Shri Ram Pal was passed by Financial Commissioner as the issue before Financial Commissioner was only legality of the ex-parte order. It was duty of the Trial court to decide afresh the proceedings U/s 85 of DLR Act in which the issue of possession was involved, but the record shows that the main petition of Shri Ran Singh filed U/s 85 was not decided, rather order of possession was passed by my predecessor Sh. Pankaj Kumar on the basis of the application filed by Shri Ram Pal. This order is without any basis and without any finding as no order of possession could be passed in this case without deciding, first the petition U/s 85 of DLR Act and it is also clear from the record that no notice was ever given to any of the party while passing the order of possession and no proceedings were ever held in the open court. Record shows that this file was taken up lastly on 6.7.99 and thereafter file was never taken up and the order of possession has been passed on the report of Tehsildar which is wrong procedure as it was judicial file and no order could be passed without noticing all the parties. It is also pertinent to mention that there are number of reports submitted by Halqa Patwari through Tehsildar that it is present applicant Sh. Yash Pal who is in possession of the land in question being purchaser from Shri Ran Singh, but the predecessor of this court did not issue notice to Shri Yash Pal, so the possession of land from Yash Pal was taken over and handing over to Sh. Sh. Ram Pal without giving any opportunity to Sh. Yash Pal of being heard and without impleading him as necessary party. Rule 99 & 100 of Order 41 CPC provides that where any

person other than Judgment Debtor is dispossessed of immovable property then such person can be ordered to be put back into possession, of the property. In this case Sh. Yash Pal applicant was not the party in the proceedings, therefore, his rights could not be affected without giving him an opportunity of being heard. In this case the petitioner Sh. Ran Singh was also not issued any notice. As per the directions of the order of Ld. Financial Commissioner, all the interested parties are to be noticed and thereafter, a fresh trial would be held and rights of the parties would be decided. So in my opinion Shri Yash Pal Mahendru is entitled for restoration of physical possession of the land which was handed over to Shri Ram Pal. So I allow the application of Sh. Yash Pal Mahendru and order that physical cultivatory possession of the land bearing kh. No. 1/24(1-4), 1/26(0-4), 139(3-8), 146(0-3) total measuring 4 bigha 19 biswas in village Budhpur (Bijapur), Delhi be handed over to Sh. Yash Pal Mahendru S/o Shri Jag Basaya R/o C-69, Mahendru Enclave, Delhi. Copy of this order be sent to the office of Tehsildar for compliance of this order on the spot and to submit this court compliance report within a week."

As noted earlier, aggrieved by the aforesaid order dated 03.08.2001, the petitioners preferred a revision petition before the Financial Commissioner, which was dismissed by the impugned order dated 18.01.2007.

9. The main grievance raised on behalf of the petitioners is that as the petitioners were always in possession of the subject land and after the notification for consolidation of the village was issued and the land was

transferred in favour of the petitioners, the respondents could not have been put back in possession thereof. Counsel for the petitioners states that right through the proceedings before the revenue authorities, respondents No. 3 to 8 failed to reveal that sale deeds had been executed by them in favour of respondent No.9 and hence, the same could not have been taken into consideration by the Revenue Assistant while allowing the restoration application of respondent No. 9. She submits that as respondent No. 9 is claiming his rights under respondents No. 3 to 8, who were in turn claiming *Bhumidari* rights in respect of the land in question, which order had been set aside by virtue of the order dated 11.06.1990 passed by the learned Financial Commissioner, remanding the case to the trial court for *de novo* trial, neither the respondents No. 3 to 8, nor respondent no. 9 could be treated as in possession of the land in question. It is therefore contended on behalf of the petitioners that the Financial Commissioner failed to appreciate the fact that the land in question could not have been transferred in favour of respondent No. 9 and as the transfer itself was impermissible, it did not vest any legal right in respondent No. 9.

10. It is pertinent to note that the petitioners took an objection in the writ petition with regard to the existence of any sale deed in respect of the subject land in favour of respondent No. 9. As per the petitioners, the

sale deeds never saw the light of the day in the proceedings before the courts below. The said stand was disputed by the counsel for respondent no. 9, who was directed to place on record, the sale deeds in question. Copies of three sale deeds, all dated 09.07.1986, executed in favour of respondent No.9, were filed by respondent No.9, alongwith his counter affidavit [Annexure R9/1 (colly)]. In support of his submission that the sale deeds were filed before the courts below, counsel for respondent No. 9 draws the attention of this Court to an application for impleadment filed by his client under Order 1 Rule 10 CPC, before the Revenue Assistant wherein in para 5, a reference was made to the sale deeds, mutations and the consolidation book enclosed with the said application.

11. In response to the arguments raised by the counsel for the petitioners, counsel for respondent No. 9 states that all the aforesaid submissions made by the petitioners are to be considered in the pending proceedings under Section 85 of the Act, wherein the issue of *Bhumidari* rights of the respondents No. 3 to 8 is to be decided. He submits that as respondent No. 9 has derived his rights from respondent No. 3 to 8, he shall also be governed by the outcome of the said proceedings wherein, his application for impleadment is still pending. It is further stated that the issue with regard to possession is such that evidence is required to be led in

the matter and that the said evidence has yet to be adduced in the pending proceedings, though pleadings are complete.

12. While examining all the aforesaid submissions of the petitioners with regard to possession, the Financial Commissioner referred to the order dated 11.06.1990, passed by his predecessor-in-interest in the earlier revision petition preferred by the petitioners by which, the matter was remanded back to the trial court for a *de novo* trial and he concurred with the findings of the Revenue Assistant in the order dated 03.08.2001 to the effect that no order of giving possession of the subject land to the petitioner was passed in their favour. The said conclusion is borne out by a perusal of the aforesaid order dated 11.06.1990, which shows that the Financial Commissioner had not decided the issue of possession at all. Rather, he had confined himself to the issue of the *ex parte* order dated 29.05.1986 passed by the SDM declaring respondents No. 3 to 8 as *Bhumidars* of the subject land, without putting the petitioners to notice. While upholding the contention of the petitioners that they were entitled to notice, the order dated 29.05.1986 passed by the SDM was set aside by the Financial Commissioner and the matter was remanded back.

13. Keeping the aforesaid background in mind, the learned Financial Commissioner, while passing the impugned order dated 18.01.2007, also mentioned that the Revenue Assistant had rightly observed in his order dated 03.08.2001 that the order dated 08.02.2001, directing warrants of possession to be issued in favour of the petitioners could not have been passed without first deciding the pending application of respondents No. 3 to 8, filed under Section 85 of the Act. The revision petition was therefore rightly disposed of with the observation that the question of possession was neither considered, or debated, nor were any orders passed on the said issue by the Financial Commissioner while passing the earlier order dated 11.06.1990.

14. The contention of the learned counsel for the petitioners that the petitioners were in possession of the subject land and ought to have been permitted to remain in possession till the proceedings under Section 85 of the Act were disposed of, is also found to be devoid of merits as admittedly, on 01.11.2000, when the petitioners filed an application before the Revenue Assistant/SO, for possession of the subject land, even as per them, they were not in possession. The Revenue Assistant had rightly observed that no order of possession could have been passed in that case, till a decision was taken in the pending proceedings under Section 85 of the Act.

15. A perusal of the order sheets enclosed at pages 239-245 of the paper book shows that the last proceeding taken by the Revenue Assistant was dated 06.07.1999. Thereafter, came the order dated 08.02.2001 passed by the Revenue Assistant on the basis of the report of the *Tehsildar*, issuing warrants of possession in favour of the petitioners. Counsel for respondent No. 9 contends that the said order was passed on the administrative side and not on the judicial side, which is denied by the counsel for the petitioners. Even if it is assumed that the aforesaid order came to be passed on the judicial side, it cannot be denied that the adversely affected parties were required to be put to notice before such an order directing warrants of possession of the subject land could have been passed. By no stretch of imagination can the said order be treated as an administrative order.

16. It is also pertinent to note that considering the fact that the report of the *Tehsildar*, submitted to the Revenue Assistant to the effect that possession of the subject land was in the hands of respondent No. 9, it was incumbent on the then Revenue Assistant to put respondent No. 9 to notice before warrants were issued, directing handing over possession of the land to the petitioners. In such circumstances, the Revenue Assistant could not have been faulted in directing restoration of the physical possession of

the land in question to respondent No. 9 as ordered on 03.08.2001. Nor can the impugned order of the Financial Commissioner be faulted on the said count.

17. Counsel for the petitioners has also raised a grievance to the effect that the objection taken by the petitioners before the Financial Commissioner that the order dated 03.08.2001 was ante-dated and there were interpolations in the order-sheet, was not considered, thus depriving the petitioners of an opportunity of hearing before the Revenue Assistant and violating the principles of natural justice. It is, however, not denied that a detailed hearing was granted to the petitioners by the Financial Commissioner. The same is also apparent from a perusal of the impugned order dated 18.01.2007. Thus, any grievance of the petitioners to the effect that the petitioners were confronted with the order dated 03.08.2001, without being afforded an opportunity of hearing, has been washed away by the fact that the learned Financial Commissioner had admittedly granted a detailed hearing to the petitioners before passing the impugned order. Furthermore, both the parties have been granted ample opportunity in the present proceedings to put forth their respective cases and address arguments.

18. By arguing that the possession of the subject land in the hands of respondent No. 9 was illegal, as he could not claim a better title to the said land, than that claimed by respondents No. 3 to 8, the petitioners are overlooking the fact that the issue with regard to possession has to be ultimately governed by the result of the pending proceedings under Section 85 of the Act. Admittedly, the said proceedings are still hanging fire. The parties are unable to explain as to why the aforesaid proceedings, which were remanded back to the first court by the order dated 11.06.1990, have still not culminated in any effective order. On being asked the status of the said pending proceedings, counsels for the parties state that while pleadings are complete, evidence has yet to be recorded. The application filed by respondent No. 9 for impleadment is also stated to be pending.

19. For curtains to be drawn on the present proceedings, which dates back to two and a half decades, it is necessary to direct the Revenue Assistant to dispose of the pending application of respondents No. 3 to 8 under Section 85 of the Act, in a time bound manner. Directions are therefore issued to the Revenue Assistant to decide the aforesaid pending application for impleadment filed by respondent No. 9, as expeditiously as possible and thereafter, proceed to deal with the application of the respondents No. 3 to 8 under Section 85 of the Act and record the evidence

of the parties. It is hoped and expected that the said proceedings shall be decided by the Revenue Assistant within a period of six months from the date of receipt of this order. Till the aforesaid proceedings are decided, the parties are directed to maintain status quo with regard to the possession and title of the subject land. Needless to state that the *status quo* order shall merge with the final orders that shall be passed in the pending proceedings under Section 85 of the Act. In view of the fact that the arguments of the parties with regard to the possession or otherwise have yet to be considered, both the parties shall be at liberty to take all the pleas that may be available to them in law.

20. The writ petition is disposed of with no orders as to costs.

HIMA KOHLI,J

AUGUST 31, 2009
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