

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 13449-50/2005**

Date of decision : 06.05.2009

IN THE MATTER OF :

SURENDER MOHAN RANA & ANR. Petitioners
Through: Petitioner No. 1 in person.

versus

SDM/RA SARASVATI VIHAR & ORS. Respondents
Through: Ms. Sonia Sharma, Advocate with
Mr. Subhash Chander, Advocate for R1 and R3.
Ms. Usha Saxena, Adv. for Mr. O.P. Saxena,
Advocate for MCD/R2.
Mr. Parvinder Chauhan, Advocate for R6.
Dr. Anurag Kumar Agarwal, Advocate with
Mr. Umesh Mishra, Advocate for R7 to R12.

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. When the matter was taken up for hearing in the pre-lunch session, as petitioner No. 1, who appeared in person, stated that his counsel was not available today, he was asked whether he needed accommodation by grant of an adjournment. He, however, declined to take an adjournment and instead submitted that he was ready to argue the matter on merits

himself. Arguments were thereafter addressed by petitioner No. 1 for over one hour in the pre lunch session and the matter spilled over to the post-lunch session for further arguments. Now, when the Court has assembled in the post-lunch session, petitioner No. 1 seeks an adjournment on the ground that he would like his counsel to argue the matter. His request is declined, since when the matter was taken up, this option was given to him, which he categorically refused to accept and insisted that the matter, being of the year 2005, is required to be heard and disposed of today itself, irrespective of his counsel's presence.

2. The present writ petition is filed by the petitioners praying inter alia for a twofold relief. The first relief sought by the petitioners is for directions to the respondents No. 1 to 3 to restrain respondents No. 6 to 14 from raising illegal, unlawful and unauthorised construction/structures over the agricultural land comprising in Khasra No. 71/2, 71/3/1 and 71/9 situated in the Revenue Estate of village Ghevra, Delhi. The second relief sought by the petitioners is for directions to respondent No. 1, SDM/RA, Sarasvati Vihar, to take a decision upon the matters remanded by the learned Financial Commissioner, Delhi vide orders dated 21.05.1999.

3. As far as the second relief is concerned, if the petitioners are aggrieved by the inaction on the part of the respondent No. 1, despite orders dated 21.05.1999 passed by the Financial Commissioner, remanding certain matters back to him, their remedy lies before the learned Financial

Commissioner and not before this Court. Under the garb of seeking the aforesaid relief, this Court cannot be permitted to be converted into an executing court by the petitioners. Hence, while declining the said relief in the present writ petition, leave is granted to the petitioners to approach the appropriate forum for seeking implementation of the orders dated 21.05.1999 passed by the learned Financial Commissioner (Annexure P-4).

4. The second relief sought by the petitioners as contained in prayer (1) of the writ petition, for directions to the respondents No. 1 to 3 to restrain respondents No. 6 to 14 from raising illegal, unlawful and unauthorised construction/structures on the land in question, has been dealt with by the respondent No. 1 in his status report dated 02.02.2009. As per the aforesaid status report, respondent No. 1 has submitted that the proceedings under Section 81 of the Delhi Land Reforms Act, 1954, (*hereinafter referred to as 'the Act'*), were initiated in respect of the land in question. Vide order dated 01.01.2008, the ejectment orders were passed and the land was directed to be vested in the Gaon Sabha. The aforesaid order of vesting the land in the Gaon Sabha has been assailed by the respondent No. 6 by filing an application under Appendix 6 Rule 14 of the Act.

5. Pursuant to the vesting order, a warrant of possession is stated to have been issued and executed on 05.09.2008, by taking possession of the land. However, action could not be taken against the land of respondent

No. 6 since application for recalling was pending. It is stated that the schedule for taking possession of the land of respondent No. 6 was fixed for 07.01.2009, but the warrants could not be executed as the respondent No. 6 sought 10 days time by submitting an undertaking. A fresh schedule for taking over the possession of the land of the respondent No. 6 was fixed for 31.01.2009. However, on the eve of the said date, respondent No. 6 is stated to have intimated that violations had been removed and the land had been put back to agricultural use. It is further stated that in view of the order dated 30.01.2009 passed in the present proceedings, on an application filed by respondent No. 6 for directions, as the Revenue Assistant was given liberty to deal with the pending application under Appendix 6 Rule 14 in accordance with law, the said application shall be taken up and decided immediately after the impending General Elections.

6. A reference has also been made by the respondent No. 1 to the status reports of the MCD and Delhi Police to the effect that the unauthorised construction has been removed and the possession of the entire land except that under the possession of respondent No. 6 has been taken over and delivered to the Gaon Sabha. It is further stated that there is no apprehension of commencement of non-agricultural use or unauthorised construction and even in respect of the respondent No. 6, it shall be ensured that during the pendency of adjudication of its application, the land would not be put to non-agricultural use.

7. Certain submissions have been made by the respondent No. 1 in the status report with regard to the relief sought by the petitioners in prayer (2). However, for the reasons stated above, the same are not being taken into consideration in the present proceedings and no observations on merits are made in that regard as liberty has been given to the petitioners to seek their remedies for implementation of the impugned orders dated 21.05.1999 passed by the Financial Commissioner by approaching the appropriate forum. If the petitioners do so, then the respondent No. 1 shall be at liberty to make submissions in response thereto, before the said forum.

8. In view of the aforesaid status report filed by the respondent No. 1 to the effect that the land in question is free from unauthorised construction and the only issue left to be decided is in respect of land under occupation of respondent No. 6, which it is stated shall be taken up and decided after the impending General Elections, the present writ petition is disposed of with directions to the respondent No.1 to decide the pending application of respondent No. 6 as expeditiously as possible and, preferably within a period of six weeks from today whereafter, necessary action may be taken in accordance with law, if necessary.

MAY 06, 2009
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HIMA KOHLI,J