

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 8477/2007 & CM 16018/2007**

Date of decision : 01.04.2009

IN THE MATTER OF :

SACHIN GANDAS & ANR.

..... Petitioners

Through: Mr. B.S. Maan, Advocate

versus

GAON SABHA MEHRAULI

..... Respondent

Through: Mr. V.K. Tandon, Advocate

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. The present writ petition is filed by the petitioners praying inter alia for quashing the order dated 4.10.2007 passed by the learned Financial Commissioner in a revision petition No.216/2006-CA filed by the petitioners under section 187 read with Section 31 Ch.VI Part-B of the Delhi Land Reforms Act, 1954 (hereinafter referred to as 'the Act') against the order dated 25.11.2003 passed by the Collector (South) in Appeal No.1/2003 and the decree dated 31.12.2003 passed by the Revenue Assistant, Hauz Khas

under Sections 81 of the Act which vested the land of the petitioners in the Gaon Sabha, ejecting the petitioners therefrom.

2. A brief narration of the previous litigation in respect of the land bearing khasra No.31/3 min.(3-12), 4/2 min.(2-3), 4/1 min.(1-16), 8/1 min.(1-7), 31/7/2 min.(3-6), situated in the Revenue Estate of village Mehrauli, Delhi is necessary. An order was passed by the Revenue Assistant, Hauz Khas on 13.3.2003 under the provisions of Section 81 of the Act on the basis of a report of the Tehsildar dated 17.12.2002, in respect of the aforesaid land to the effect that the petitioners were using the said agricultural land for non-agricultural purposes. As a result, the petitioners were directed to reconvert the said land back to use for agricultural purposes within a period of three months from the date of the order, failing which, it was directed that the said land shall vest in the Gaon Sabha absolutely and the petitioners would be ejected.

3. Aggrieved by the aforesaid order dated 13.3.2003, the petitioners filed an appeal before the Collector(South), under Section 65 of the Act, which was dismissed vide order dated 25.11.2003 with the observation that the records be sent back to the court of the Revenue Assistant for further proceedings. Meanwhile, the Revenue Assistant, Hauz Khas passed another order dated 31.12.2003 confirming his previous order dated 13.3.2003 and extinguishing the bhumidari rights of the petitioners in the land in question and vesting the same in Gaon Sabha.

4. Aggrieved by the aforesaid order of the Collector dated 25.11.2003 and the order of the Revenue Assistant dated 31.12.2003, the petitioners preferred a revision petition before the learned Financial Commissioner under Section 187 of the Act, which was dismissed *in limine* on 13.2.2004 with the observation that there was no ground to interfere with the impugned orders. The petitioners then approached this Court by filing Civil Misc. (Main) petition, registered as CM(M) 355/2004. Vide order dated 15.09.2006, the aforesaid revision petition was disposed of with the observation that the impugned order dated 13.02.2004 passed by the Financial Commissioner did not record any reasons. The said order was therefore set aside and the matter was remitted back to the Financial Commissioner to re-hear the case and decide the same in accordance with law after recording reasons for his decision.

5. The parties then appeared before the Financial Commissioner, who passed the impugned order dated 04.10.2007, dismissing the revision petition with the observation that the order of the Revenue Assistant dated 31.12.2003, disposing of the proceedings against the petitioners under Section 81 of the Act, had become final and against the final order of the Revenue Assistant, only an appeal lay with the Deputy Commissioner, which was not preferred by the petitioners herein.

6. Counsel for the petitioners assails the aforesaid order on the ground that the learned Financial Commissioner failed to appreciate the fact

that any order passed under Section 82 of the Act could have only followed an order passed under Section 81 of the said Act. He further states that the order dated 31.12.2003 passed by the Revenue Assistant was not a judgment or a decree and that the petitioners were entitled to challenge the aforesaid order by way of a revision petition. He, therefore, submits that the Financial Commissioner erred in dismissing the revision petition on the ground of its maintainability, without going into the merits of the case.

7. *Per contra*, counsel for the respondent states that the order dated 13.03.2003 of the Revenue Assistant was passed under the provisions of Section 81 of the Act, it being a provisional order, whereas the order dated 31.12.2003 was a final order passed by the Revenue Assistant, which was appealable only under the provisions of Section 185 of the Act. He therefore submits that the learned Financial Commissioner was justified in holding that the petitioners having failed to seek their appropriate remedies by filing an appeal before the Deputy Commissioner, under the aforesaid provision of law, could not have preferred the revision petition and the same was rightly rejected as not being maintainable.

8. The submission of the counsel for the respondent is that the order passed by the Revenue Assistant dated 31.12.2003 was, in fact, a final order and in pursuance to the order of the Collector dated 25.11.2003. But the facts reveal that the maintainability of the revision petition was a subject matter of consideration even in the earlier revision petition filed by the

petitioners, which was rejected vide order dated 13.02.2004, wherein no such distinction was sought to be made between the orders dated 25.11.2003 and 31.12.2003 and rather, being a non-speaking order, it was set aside vide order dated 15.09.2006 passed in the Civil Misc. (Main) proceedings registered as CM(M) No.355/2004 and the Financial Commissioner was directed to re-hear and decide the matter in accordance with law after recording reasons for the decision. A new case No. was assigned to the matter before the Financial Commissioner being No.216/2006.

9. In the impugned order dated 04.10.2007, the learned Financial Commissioner rejected the revision petition on the ground of maintainability without looking at the merits of the case of the petitioners, thus depriving them of an opportunity of hearing on merits. The purpose and intent of the order dated 15.09.2006 passed in CM(M) 355/2004 was to ensure that the petitioners are granted a hearing in the matter on merits, whereafter a decision was required to be passed in accordance with law after recording reasons for the decision, which eventuality did not arise.

10. In view of the fact that Section 64 of the Delhi Land Revenue Act, 1954 provides for a remedy of appeal against an order of the Revenue Assistant before the Deputy Commissioner and in view of the fact that the petitioners have yet to receive an order on merits of their case, even after six rounds of litigation, the present writ petition is disposed of alongwith the

pending application, with liberty to the petitioners to approach the Deputy Commissioner against the order dated 31.12.2003 passed by the Revenue Assistant under Section 81 of the Act, under the aforesaid provisions of law. In the said proceedings, the petitioners shall be entitled to invoke the provisions of Section 14 of the Limitation Act, 1963 before the Deputy Commissioner to explain the delay and seek condonation of delay in preferring the appeal, and the same shall be duly taken into consideration before passing any order on merits.

11. The writ petition is disposed of, along with the pending application.

HIMA KOHLI,J

APRIL 1, 2009
rkb