

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

Date of decision: 18th November, 2010.

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W.P.(C) No.12887/2006

NATHI RAM

..... PETITIONER

Through: Mr. Shaju Francis, Advocate

Versus

GOVT. OF NCT OF DELHI & ORS.

..... RESPONDENTS

Through: Ms. Ruchi Sindhwani, Advocate

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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 |

RAJIV SAHAI ENDLAW, J.

1. The petitioner, claiming to be in possession of land admeasuring approximately 1000 sq.yds. in Khasra No.1658 in village Aya Nagar, Delhi, has filed this petition for restraining the respondents from forcibly and / or otherwise dispossessing him from the said land and / or for demolishing the structures built on the said land. It is *inter alia* the case of the petitioner that the said land is his ancestral land and he is the bhoomidar thereof within the meaning of Delhi Land Reforms Act, 1954 and he along with his family and his brothers has been in continuous uninterrupted possession of the said land since times immemorial. The petitioner however admits that proceedings

under Section 86A of the Delhi Land Reforms Act were instituted in or about the year 1968 against the predecessors of the petitioner and an order of ejectment passed on 9th July, 1971; that the predecessors of the petitioner preferred a statutory appeal to the Court of Collector, Delhi which was also dismissed on 15th January, 1973. The petitioner claims that the said decree of ejectment from the land remained unexecuted, crystallizing into a valuable right, title and interest in accordance with the provisions of the Delhi Land Reforms Act; several provisions are cited in para 3B of the petition. It is also claimed that the petitioner has become owner by adverse possession of the said land. The present petition was filed when the respondents attempted to dispossess the petitioner from the said land.

2. Notice of the petition was issued and on the argument of the counsel for the petitioner that no period of limitation for execution of an ejectment order has been prescribed in the Act and in terms of Section 190 of the Act, the limitation prescribed in the Limitation Act, 1963 of 12 years for execution would apply and which had elapsed, the respondents were directed to maintain *status quo* in respect of the aforesaid land during the pendency of the petition.

3. The respondents have filed a counter affidavit in which it is stated that the petitioner is not a Bhoomidar but an encroacher; that the Gaon Sabha has several times demolished the structures built on the land and the petitioner repeatedly enters upon the land and illegally makes construction thereon.

4. No rejoinder has been filed by the petitioner.

5. Though this petition was being listed along with WP(C) No.12260-62/2006 and several other petitions relating to village Aya Nagar and it is also the case of the petitioner that the matter in controversy in the present petition is the same as in WP(C) No.12260-62/2006 but there is no order of ejectment in WP(C) No.12260-62/2006 as in the present case.

6. Section 84 of the Delhi Land Reforms Act provides for ejectment of persons occupying land without title; the same contemplates a suit by the Gaon Sabha also. Section 86A inserted by the amendment of the year 1965 merely enables the Revenue Assistant also to on his own, initiate proceedings for ejectment from the land of the Gaon Sabha and not necessarily on the suit of the Gaon Sabha as provided for in Section 84. Section 84(2) provides that where any person against whom a decree for ejectment from any land has been executed in pursuance to a suit under Section 84(1) re-enters or attempts to re-enter upon such land otherwise than under the authority of law, he shall be presumed to have done so with intent to intimidate or annoy the person in possession or the Gaon Sabha as the case may be, within the meaning of Section 441 of the Indian Penal Code.

7. Section 85 provides for the consequences of failure to file a suit under Section 84 or failure to execute a decree within the period of limitation provided therefor. The same *inter alia* provides that in such eventuality the

person in possession becomes a Bhoomidar or Asami as if he has been admitted to the possession of the land by the Gaon Sabha. Section 86 provides for ejectment of a person becoming a Bhoomidar under Section 85.

8. However, in the present case, the defence of the respondent is that the petitioner / his predecessors in pursuance of the admitted decree for ejectment were ejected and have illegally repossessed. If that be the case, then the possession of the petitioner would be as of a trespasser making him guilty of the offence of trespass under Section 441, IPC and not of a Bhoomidar.

9. The counsel for the petitioner during the hearing has orally denied that the decree for ejectment was ever executed or that the petitioner or his predecessors in pursuance thereto removed from the land. However, the same becomes a question of fact and which cannot be adjudicated in writ jurisdiction. Even otherwise writ is an equitable remedy. The petitioner was admittedly found to be a trespasser over the land of Gaon Sabha and ordered to be ejected therefrom. The said order has attained finality. The trespasser over Gaon Sabha land is not found entitled to invoke the equitable jurisdiction of this Court particularly when the petitioner did not take any steps whatsoever for declaration of his rights as a Bhoomidar under Section 85 of the Act. Had the decree for ejectment remained unexecuted as is alleged by the petitioner and had the petitioner owing thereto acquired any lawful title to the land with respect wherefrom he had earlier been ordered to

be ejected, the petitioner ought to have approached the Courts under the Delhi Land Reforms Act for declaration of his rights and which Courts were competent to go into the factual controversy as to whether the decree for ejectment was executed or not.

10. The counsel for the petitioner has also argued that the respondents have not produced any documents showing that the decree for ejectment was executed. However, the petitioner himself has not produced before this Court any document as would have been in his possession showing that his possession / cultivatory possession of the land was recorded in the revenue records after the decree for ejectment. It is the petitioner who has approached this Court and the burden of making out a case for grant of relief was on the petitioner and the petitioner has utterly failed to discharge the same and cannot succeed by picking holes in the defence of the respondents. Even otherwise, the version of the respondents is more in consonance with the ordinary course of human conduct, of the decree for ejectment having been executed. Had the decree not been executed, not only would have been the possession of the petitioner been recorded in the revenue record made on annual basis or the petitioner would have taken care to have his name/possession recorded with respect to the land aforesaid but the petitioner would also have had his rights / title as Bhoomidar got declared. This Court in *Jawahar Singh Vs. Financial Commissioner* 144 (2007) DLT 53 in the context of Section 85 held that while proof of possession may be a

strong presumption in favour of claimant, such claimant cannot succeed in getting Bhumidari rights recorded when the evidence in the form of Record of Rights suggest to the contrary.

11. Rather the petitioner is not sure of his case. While he has on the one hand pleaded that he has become Bhoomidar on failure to execute decree for ejectment, he on the other hand claims title by adverse possession also against Gaon Sabha. The two pleas are mutually destructive as reiterated recently in *L.N. Aswathama Vs. P. Prakash* (2009) 13 SCC 229. The Supreme Court in *Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan* AIR 2009 SC 103 also held that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate and recommended suitable changes therein. Moreover, as aforesaid the petitioner has not filed any document to make out a case of uninterrupted peaceful possession for over 12 years or of having asserted any rights adversely to the Gaon Sabha.

12. There is no merit in the petition. The same is dismissed. The interim order is vacated. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

18th November, 2010
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