

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

Reserved on : 17.12.2009

% Date of decision : 07.05.2010

+ WP (C) No. 5393 / 2007

JOGENDER SINGH & ANR.

...PETITIONERS

Through: Mr. Anand Yadav and Ms.Anita
Tomar, Advocates.

Versus

GOVT. OF NCT OF DELHI & ORS.

...RESPONDENTS

Through: Mr. Najmi Waziri, Adv.
for Respondent Nos. 1 to 4.

Ms. Anusuya Salwan, Adv.
for Respondent No. 5.

None for Respondent No. 6.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

SANJAY KISHAN KAUL, J.

1. The petitioners are residents of Village Kanjhawla and claim to be members of Gaon Sabha of Village Kanjhawla, Delhi.
2. The petitioners have a two-fold grievance. The first grievance is that the land of the Gaon Sabha which was designated for purposes of development of a Growth Centre cannot be

utilized for any other purpose more specifically the scheme of the Government to construct housing for urban poor.

3. The second grievance is that the elections to the village panchayats have not been held for a long period of time and the mandate of the Part IX of the Constitution of India (for short, 'the Constitution') was being defeated by the Gaon Sabhas being managed by administrators other than elected panchayats.

Utilization of Gaon Sabha Land to Construct Housing for Urban Poor

4. The petitioners have explained the historically significant aspects of land holding in Delhi. The land of the village is stated to have been held by a class of villagers/land holders known as Biswadar, i.e., holder of share/shares in coparcenary villages. The said class was stated to be also known as Malikan Deh or Village Proprietary Body. It is this class of villagers / land holders who were the owners of the land of the whole village. The biswadars held two types of lands, i.e., (i) land included in their holdings; and (ii) the land which is known as common land or Shamlat Deh Land. The second category of land being the Shamlat Deh, this proprietary class had their shares as per ownership in the village, but lands were owned jointly. The character of these lands was abadi land, gora deh, waste land and land of the other common use as recorded in the revenue records. The commentary "Customary Law" by Rattigan defines such village common land in the colloquial term as Shamlat Deh and Abadi Deh and included uncultivated

(Banjar and Pasture Land), the abadi and inhabited village site and gora deh or vacant space reserved for extension of village dwellings and adjoining the village sites. The commentary by Minoti Chakravarti Kaul in the book titled "*Common Land and Customary Law*" also defines the common land by giving the historical significance pointing out that in all those areas of Punjab which had settled villages prior to British entry, and which combined arable farming with pastoral activities, there were extensive common lands or banjar kadim held collectively by the malikan deh or village proprietary body. Apart from this there were other categories of uncultivated lands held in common such as the abadi-deh or the residential area, the catchment areas or johads, the area around the village site or the gora deh and the wood lot. The Malikan Deh had a bundle of rights in these categories of land of which the principal ones were the right to hold and to partition, the right to manage and the right to use. Such common lands were central to the system of village management where the private and arable land was generally held in scattered strips while the residential and pastoral land was arranged in compact holdings.

5. It is in the aforesaid circumstances that the petitioners pleaded that the Malikan Deh, a proprietary body, had the right to manage and right to use the common lands as also the right to transfer the lands or to give the said lands to a particular class or persons. In pursuance to such rights, the said proprietary class in Delhi and other villages of Punjab

gave lands to other residents of village for residence and also to other uses i.e. lands to the persons who were supporting and supplementing the economy of the village.

6. The lands of the villagers in Delhi Tehsil are stated to have been governed by the Punjab Land Revenue Act, 1887 and Punjab Tenants (Security of Tenure) Act, 1950 till Delhi Land Reforms Act, 1954 ('DLR Act' for short) came into force. It is under the DLR Act that the persons or bodies holding land either as proprietor or tenants or sub-tenants were declared as Bhumidars as per Sections 11 and 13 of the DLR Act. The Delhi Land Reforms Rules, 1954 were also framed. The material Section 7 of the DLR Act vested the rights of proprietors in waste land/pasture land of common utilities in Gaon Sabha. The significance of the DLR Act coming into force was that all lands of common utilities which were owned by the proprietors of the villages and which were commonly used by the villagers were vested in Gaon Sabha and proprietors were divested of their ownership. Insofar as the agricultural land in Delhi was concerned, the persons holding such land became Bhumidars of the land and there was also a class of tenure holders. The provisions of DLR Act provided for the mode, manner and transfer of land and consequences of its contravention resulting in vesting of the land in the Gaon Sabha. Similar were the consequences if the bhumidar or asami left the land uncultivated for two consecutive agricultural years. Another material provision is Section 154 of

DLR Act which provided for certain lands to vest in the Gaon Sabha on the commencement of the DLR Act.

7. In order to appreciate the controversy, it is necessary to reproduce the provisions of Section 7 and Section 154 of the DLR Act which read as under:

“7. Rights of proprietors in waste lands, pasture lands or lands of common utility etc. to vest in Gaon Sabha and compensation to be paid for them. – (1) All rights of an individual proprietor or proprietors pertaining to waste lands, grazing or collection of forest produce from forest or fish from fisheries lands of common utility, such as customary common pasture lands, cremation or burial grounds, abadi sites pathways, public wells, tanks and water channels, or Khalihans, whether covered by an existing contract between such proprietor or proprietors and any other person or not, shall with effect from the commencement of this Act be terminated in accordance with the provision of sub-section (2) and the said contracts, if any, shall become void with effect from such commencement:

... ..

(2) On the commencement of this Act, the Deputy Commissioner shall pass an order in respect of the proprietor or proprietors of each village either singly or collectively divesting the individual proprietor or proprietors of the rights mentioned in sub-section (1) and vesting those rights in the Goan Sabha or in any person or authority appointed by the Chief Commissioner under section 161 with effect from the commencement of this Act and stating that a compensation equal in value to four times the amount of annual land revenue assessed at the last settlement for the cultivable and uncultivable waste area of the village shall be paid by the government to the proprietor or proprietors concerned.”

“154. Vesting of certain lands etc, in Gaon Sabha. – On the commencement of this Act –

- (i) All lands whether cultivable or otherwise, except land for the time being comprised in any holding or grove,
- (ii) All trees (other than trees in a holding or on the boundary thereof or in a grove or abadi) or planted by

a person other than a proprietor on land other than land comprised in his holding,

(iii) Public wells,

(iv) Fisheries,

(v) Hats, bazaar and meals, except hats, bazaar and meals held on land to which provisions of clauses (a) to (c) of sub- section (1) of section 11 apply,

(vi) Tanks, ponds, water channels, pathways and abadi sites,

(vii) Forest, if any.

Situate in a Gaon Sabha Area, shall vest in the Gaon Sabha :

Provided that if the uncultivated area situate in any Gaon Sabha area is, in the opinion of the Chief Commissioner, more than the ordinary requirements of the Gaon Sabha, he may exclude any portion of the uncultivated area from vesting in the Gaon Sabha, he may exclude any portion of the uncultivated area from vesting in the Gaon Sabha under this section and may make such incidental and consequential order as may be necessary.

(2) Where any land which is vested in the Central Government under sub-section (3) or sub-section (4) of section 150, is held immediately before such vesting by an Asami of a Gaon Sabha, then, notwithstanding anything contained in clause (b) of sub-section (2) of section 1, and so long as it is held by such Asami, the provisions of this Act shall continue to apply to such land subject to the modification that all references therein to Gaon Sabha and Gaon Panchayat shall in relation to such land be construed as references to the Central Government."

8. A reading of the provisions of Section 7 of DLR Act shows that the rights of the proprietors in the categories of land mentioned in the said Section vested in the Gaon Sabha for which compensation was paid to the proprietors in the manner provided in the said Section. It is nobody's case that such compensation has not been paid. Section 154 of DLR Act provides for vesting of certain categories of land in the Gaon

Sabha. The proviso to Section 154(1) refers to uncultivated area located in any Gaon Sabha which is more than the requirements of the Gaon Sabha. Such land, if in the opinion of the Chief Commissioner, is more than the ordinary requirements of Gaon Sabha, can be excluded from vesting in the Gaon Sabha and incidental and consequential orders in this behalf can be passed.

9. We may at this stage itself deal with one of the pleas of the petitioners, *al beit* a feeble attempt, arising from the interpretation of the aforesaid Sections.

10. Learned counsel for the petitioners pleaded that the land which was proprietary in terms of Section 7 of the DLR Act was divested of that proprietary characteristics as it became the common land on compensation being paid and vested in the Gaon Sabha.

11. The said land was, however, pleaded as land which could not be dealt with under proviso to Section 154 of DLR Act as the same would have to be dealt with as per Section 7 of the DLR Act. This plea was in furtherance of the claim that the land which vested in the Gaon Sabha under Section 7 of the DLR Act could never be taken away from the Gaon Sabha.

12. The aforesaid plea is only stated to be rejected. It is a plea based on complete misreading of the two Sections. Section 7 of the DLR Act only refers to the rights of individual proprietors pertaining to certain kinds of lands which on payment of compensation as provided in the said Section would vest with the Goan Sabha while Section 154 of the DLR

Act talks of vesting of certain lands in Gaon Sabha which include lands whether cultivable or otherwise, except land for the time being comprised in any holding or grove. There are, of course, other lands mentioned under Section 154 of the DLR Act. The land referred to under Section 7 of the DLR Act was the land in which all members of the village had an interest though the proprietors had special rights. It is these special rights which were acquired and extinguished on payment of compensation and the common interest of the villagers in the land continued. It is thus abundantly clear that Section 7 of the DLR Act refers to acquiring and vesting of the rights in the Gaon Sabha which were originally the rights of the proprietors in the common utility land and thus such land on being vested in the Gaon Sabha can certainly be dealt with as per proviso to Section 154 of the said Act. The expression in Section 154(1)(i) is that "*all lands whether cultivable or otherwise*". The proviso to Section 154 refers to the uncultivated area situated in the Gaon Sabha, which in the opinion of the Chief Commissioner, is in excess of the ordinary requirements of the Gaon Sabha and it can thus be excluded from vesting in the Gaon Sabha.

13. We are fortified in our view by the Judgment of the Supreme Court in Hatti v. Sunder Singh, Supreme Court Reports (1971) 2 SCR 163 where it was observed as under :

"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 became a Bhumidar of it. If it was part of a holding of some other person, such as a tenant

or a sub-tenant etc., he became either a Bhumidar 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. In the case of proprietors, their rights in the land continued to exist only in respect of holdings which, under the definition, must have been either their sir or khud kasht at the commencement of the Act. If it was not sir or khud kasht of a proprietor, it would not be his holding and, consequently, such land would vest in the Gaon Sabha under Section 154, the result of which would be that the rights of the proprietor would be extinguished. It appears that it was in view of this scheme of the Act that, under Section 84, the right to institute a suit for possession was granted only to a Bhumidar, or an Asami, or the Gaon Sabha. The Act envisaged only these three classes of persons who would possess rights in agricultural land after the commencement of the Act. Proprietors as such having ceased to exist could not, therefore, institute a suit for possession. This aspect of the case has been lost sight of by the High Court and the lower courts, because it appears that their attention was not drawn to the provisions of Section 154 of the Act, under which all lands of proprietors, other than those comprised in their holdings, vested in the Gaon Sabha, thus extinguishing their proprietary rights."

14. We may also note at this stage that in terms of the notification dated 25.01.1990 of the Administration of Union Territory of Delhi, the pradhans, up-pradhans and Panchas or members of the Gaon Panchayats whose terms had expired on 24.12.1989 were required to hand over the entire records to the Deputy Commissioner, Delhi and it is the Deputy Commissioner, Delhi who has thereafter been discharging, exercising and performing the functions of pradhans, up-pradhans and Panchas or members of the Gaon Panchayats. Insofar as the lands forming subject matter of dispute is concerned, it is about 12 years ago that a Scheme for development of Growth Centres in the land adjoining in some villages in Delhi was floated with the object of ensuring that

the villages of Delhi form an intrinsic part of the overall development of the City/State. The proposed Growth Centres were stated to be self-centered regarding manner of operation and other daily needs. It is in furtherance thereto, the land which was considered as excess land in Village Kanjhawla was leased out by the Gaon Sabha to Delhi Administration. A sum of Rs.12,19,62,700/- was transferred to the Kanjhawla Gaon Sabha in the year 1996. However, the Scheme never worked out. The respondents have pointed out that in terms of the Master Plan for Delhi 2021 and the Zonal Plan thereunder in respect of the area in question, 19 villages of Delhi came under urbanizable area (areas in transition) and 10 villages in the peripheral green belt. The surplus area in Kanjhawla Village is shown as residential (urbanisable area) and thus more residential quarters are planned in the said surplus / unutilized excess lands to accommodate the ever growing demand for housing in Delhi. The growing development needs of Delhi made it imperative that the excess lands of the Gaon Sabha should be put to optimum and planned use. It is in this context that an exercise was undertaken under Proviso to Section 154 of the DLR Act to determine the lands that were in excess of the ordinary requirement of the Gaon Sabha.

15. A Survey was conducted of the Gaon Sabha areas and the data collected was examined. It was found that the certain tracts of uncultivated and unused lands in the Gaon Sabha Area were surplus or more than the ordinary requirements of the Gaon Sabha. It is in pursuance to such

exercise, the LG of Govt. of NCT of Delhi (Chief Commissioner) in terms of the Order dated 04.01.2008 was pleased to declare these lands as being excluded from vesting in the Gaon Sabha and such lands could be utilized to meet the development exigencies. It has been emphasized by respondents in their additional affidavit affirmed on 29.04.2008 that certain well-thought out parameters/norms were set for assessment of land in excess of the ordinary requirements of the Gaon Sabha and such parameters are in accordance with MPD-2021.

16. The land requirements of Village Kanjhawla were also examined according to 13 norms. The extent of scrutiny done and the parameters followed have been set out in the additional affidavit, which we feel should be re-produced hereunder to get a holistic picture of the factual matrix of any land sought to be declared as excess land for Village Kanjhawla. The norms read as under:

“i. Present population of Village Kanjhawla (2007) : 9570 (based on 2001 census)

ii. Projected population in villages of Delhi in 2021, including migratory population (percentage increase registered in 2001 census over the 1991 census may be taken as the basis to project the 2021 population)

- Projected population of village Kanjhawla in 2021 : 11005

The requirement of all basic facilities has been assessed with reference to the present population as well as population projected in 2021.

iii. Area required for extended village abadi

The Lal Dora Abadi Area, prior to the land consolidation exercise in 1995-96 was merely 240 bighas. However, post consolidation exercise, the extended Abadi Area has increased ten-fold to 2438 bighas.

iv. Area required for cottage industries

In the case of M.C. Mehta v. UOI, the Hon'ble Supreme Court of India had directed all polluting industrial units to be shifted out of non-conforming areas to conforming areas. In the North West District the following industrial areas are located:

- a) Narela
- b) Wazirpur
- c) Mongolpuri
- d) Lawrence Road
- e) Bawana (merely 6 kms from Kanjhawla Village and is the largest industrial area in Delhi)
- f) Badli

300 square yards for cottage industries for those who do not have lands. All applications for allotment of industrial plots are done through Delhi Small Industries Development Corporation (DSIDC)

v. Area required for hospitals, dispensaries: Master Plan 2021 norms (Table 3.1)

- a) 1 Dispensary for a population of 10,000 (area 8000 to 1200 sq. meters)
- b) Hospital with 100 beds (D Category) for a population of upto Rs 1 lakh (0.5 to 1 acre)

Dispensary/Health Centre

- A dispensary/health centre already exists at Village Kanjhawla (in Khasra No.153)
- Maharishi Valmiki Hospital (100 bedded) is located about 7 kms away in Village Pooth Khurd
- Baba Saheb Ambedkar Hospital at Rohini
- Sanjay Gandhi Hospital at Mongolpuri (10 kms away)
- Raja Harishchand Hospital at Narela
- Land has been allotted for a 50 bed hospital 3 kms away in Village Jaunti

Private Hospitals

- Max Hospital at Pitampura (12-13 kms)
- Maharaja Agrasen Hospital at Punjabi Bagh (350 bedded)

Veterinary Hospital

- A Veterinary Hospital also exists in Village Kanjhawla.

vi. Area required for educational purposes such as primary secondary and vocational centres i.e. ITIs etc.

Master Plan 2021 norms (Table 13.3)

Primary School 1 Unit for a population of 10,000
Plot area 0.2 -0.4 ha

Sr.Secondary School 1 Unit for a population of 10,000
Plot Area 0.6 to 0.8 ha

N.B. Present population of Village Kanjhawala is under 10,000 however,

Schools

- 1 Boys' Senior Secondary School,
- 1 Girls' Senior Secondary School (Khasra No.142/113) and
- Haryana Shakti Secondary School, already exist in Village Kanjhawla (Khasra Nos.151 and 152)
- At about 3.5 kms away, in Village Karala, two more Sr.Secondary Schools (one for boys and one for girls) exist.
- At Village Ladpur, about 0.5 kms another Secondary School exists.

Colleges

- At Village Ghevra, about 3 kms away, there is a technical institute called Sir Chhotu Ram Institute of Technology.
- At Bawana, about 6 kms away, there is a degree college for women named Aditi College.

vii) Provision of commercial area for grocery stores, other merchandise shops, shops for seeds and fertilizers, milk booths, barber shops, tailors hops, LPG, FPS,etc.

- Mobile PCO's have been given to handicapped persons and they are available in the village.
- Grocery and seed and fertilizer shops exist in the village along with tailor and barber shops. However, there are no norms for opening the latter types of shops, as these are dependent upon private enterprise and locally available skills.

viii) Area required for bus terminals, taxi stands, cycle/rickshaw stand, Patwar Ghar

- A Bus Depot is located in the village. A private taxi stand also exists which normally has 4-5 taxis parked.
- Offices of the Deputy Commissioner, Sub Divisional Magistrate and the ADM alongwith the Patwar Ghar are located in the Village area.

ix) Institutional/office space for Post Office, Banks, PCOs, Police Stations, etc.

- Branches of the State Bank of India and the Central Bank of India, Panchyat Ghar, Post Office and 5 village Chaupals are located within the Village. The Chaupals are used by various communities for marriage purposes and other social gatherings.
- A Fire Station in Bawana is merely 6 kms away.
- The Village population qualifies for only a police post. However, a full-fledged police station, with staff quarters, exists in the village. It is good enough to cater to the policing needs of a population of over 2.5 lacs, including nearby villages like Ladpur, Karala, Madanpur, Dabas, Rani Khera, Ghevra, Savda.

x) Sports Complex, playground, Community Park, Barat Ghar, Cinema Halls.

Master Plan 2021 norms

Banquet Hall for a population for 10,000 (area required 1 acre)

- A Multi Purpose Community Hall exists on an area of 1.5 acres. Out of this the built up area consists of 1100 sq yards about 1500 yards of this land has been earmarked for construction of a Banquet Hall. The remaining once of land is used by the villagers as a play ground.
- At Kanjhawla Chowk a new chaupal has been built on an area of 700 sq yards along with a temple. The plot area is 9 bighas 4 biswas. The remaining area is used as park by the residents of the Village.

xi) Area required for cremation ground and graveyard:

In Village Kanjhawla there are two cremation grounds (Khasra Nos.30, 24/2, 25, 17/9 and one graveyard)

xii) Grazing grounds and areas around the water bodies:

A water body called Khwaja Ka Talab exists in the village and plans are afoot to have the same further developed by the Flood and Irrigation Control Department of the GNCTD.

xiii) Circulatory area

A four lane (about 100' wide) circulatory area for access of fire tenders and ambulances exists in the village. The main arterial road links the village to Rohtak Road, Bawana, Pitam Pura and Haryana Border."

17. The aforesaid parameters were thus considered along with the factum of population growth of the village being only 5 per cent between 1991 to 2001 from 8182 to 8613. Till 2007 it rose to 9570, a 10 per cent increase. The Lal Dora Abadi Area, prior to the land consolidation exercise in 1995-96 was merely 240 bighas but post-consolidation exercise, the Extended Abadi Area has increased ten-fold to 2438 bighas. It has thus been pleaded that all requirements have been taken care of and it is through the aforesaid surveys that the conclusion was reached that an area of 956 bighas in Village Kanjhawla was in excess of the current and projected requirements of the village. Thus, the LG declared 956 bighas in the village as surplus as per the notification dated 04.01.2008.

18. Learned counsel for the Govt. of NCT of Delhi, however, subsequently clarified on 17.09.2009 that though the exercise by the respondents under proviso to sub-section (1) of Section 154 of the DLR Act has been undertaken, though something more may be required to be done, the notification has yet not been issued as the respondents were awaiting the fate of the present litigation.

19. If we examine the aforesaid factual matrix as set out in the additional affidavit in the background of the existence of power under Proviso to Section 154 of the DLR Act, we find that an elaborate exercise has been undertaken with relevant data at command to work out the requirements of the village Kanjhawla. It is trite to say that more and more area of Delhi

has got urbanized over a period of time requiring development of infrastructure. Villages have really ceased to be villages. The declaration of excess land is not sought at the whim and fancy of the LG, but based on the hard facts and empirical data. The LG would have to, thus, come to a conclusion about the availability of the excess area after considering various requirements in the context of projected population of Village Kanjhawla in 2021. This is not an isolated exercise carried out for village Kanjhawla but for various villages in order to find out the requirements of each village and the existence of excess land, once it is declared as surplus could be used for infrastructural development. Learned counsel for the Govt. of NCT of Delhi conceded the right of the petitioners to make a representation or to be heard before completion of the exercise under the proviso to sub-section (1) of Section 154 of the DLR Act.

20. The facts of the present case show that initially the area was sought to be utilized for growth centres. These growth centres were to be set up with the object of promoting infrastructure facilities not necessarily confined to a village but to all adjacent areas. The Scheme did not take off. The petitioners, and for that matter, no other villagers had any objection to such development of growth centres when the Gaon Sabha land was leased out in the year 1996 and even a sum of over Rs.12 crore was deposited with the Gaon Sabha. The grievance of the petitioners stems from the current use of the land as it is their plea that either the land should be

utilized for growth centres or reverted back to the Gaon Sabha.

21. We have held aforesaid that the land in question does fall within the purview of exercise of power under proviso to Section 154 of the DLR Act. The land in question is common land which vested in the Gaon Sabha as per Section 7 of the DLR Act. On completion of a detailed exercise, the land has been found to be in excess of the ordinary requirements of the village and is now sought to be excluded from vesting in the Gaon Sabha and to be utilized as per MPD-2021. Housing for urban poor is a major problem in Delhi. It is in furtherance to this object that the land is sought to be utilized. The village needs are sought to be taken care of as per the exercise and thus we find nothing arbitrary or illegal in the Govt of NCT of Delhi seeking to utilize the land which has been declared surplus/excess under Proviso to Section 154 of DLR Act in accordance with MPD-2021 and the lay-out plan drawn in pursuance thereto. The proposal for utilization of land for growth centres was cancelled and the land has been transferred to DSIDC for housing project. There is, thus, merit in the stand of the Govt. of NCT of Delhi that the writ petition is premature as the exercise has not been completed by issuance of a notification though the material has been placed before the L.G.

22. The petitioners pleaded that the 69th Constitutional Amendment made in the year 1991 effective from 01.02.1992 provided for special provisions with respect to Delhi by

inserting Article 239AA in the Constitution. The relevant clause 3(a), (b) and (c) of Article 239AA read as under:

“239AA. Special provisions with respect to Delhi.—

(3)(a) Subject to the provisions of this Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List in so far as they relate to the said Entries 1, 2 and 18.

(b) Nothing in sub-clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union territory or any part thereof.

(c) If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void:

Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President and has received his assent, such law shall prevail in the National Capital Territory:

Provided further that nothing in this sub-clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly.

The aforesaid clause shows that in respect of entries 1, 2 and 18 of the State List, the Delhi Assembly does not have powers to make law. Entry 1 refers to Public Order, Entry 2 refers to Police and Entry 18 refers to land. Entry 18 reads as under:

“Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

It has thus been pleaded that the Govt. of NCT of Delhi has no power to make any law in respect of the land.

23. We fail to appreciate the relevance of the aforesaid plea for the reason that the DLR Act came into effect after having been passed by the then State Legislature Assembly on 20.07.1954. No challenge to that law is laid or can be sustained. The powers that are sought to be exercised are in pursuance to the existing statute being the DLR Act and no further law is to be brought into force. The plea is thus meaningless.

24. We, thus, find that the challenge on the part of the petitioners is really to the possibility of a proposed notification under the proviso to sub-section (1) of Section 154 of the DLR Act, which notification is yet to be issued. The Deputy Commissioner has sent the report to the L.G. The L.G. will apply his mind to the exercise carried out by the Deputy Commissioner and in the process of the said exercise, the L.G. can give an opportunity to the petitioners to make a representation in respect of the report of the Deputy Commissioner before taking a final view in the matter. The challenge is, thus, clearly premature.

Elections to Panchayats

25. The petitioners have sought to raise what, in our opinion, is a completely non interlinked issue of the absence of elected

panchayats. The object appears to be to link this issue to the first issue only because the powers are being exercised by the Deputy Commissioner losing sight of the fact that the first grievance really arises from the exercise of power by the LG as per proviso to Section 154 of the DLR Act and the Deputy Commissioner only makes the recommendations in respect of the excess land after carrying out the necessary empirical exercise based on the ground realities.

26. Be that as it may, the issue having been raised though in our considered opinion it has no bearing on the first issue, we proceed to deal even with this aspect of the matter. The facts germane to this issue are that the lands vested in the Gaon Sabha in terms of the DLR Act and were administered by the Gaon Panchayats. The Gaon Panchayat was the executive body for every Gaon Sabha. All the Gaon Panchayats in Delhi were however superseded by the Administrator of Union Territory of Delhi vide notification dated 25.01.1990 and all duties, powers and functions of the Gaon Panchayat were to be decided, exercised and performed by the Deputy Commissioner. Thereafter, no elections have been held for Gaon Panchayats

27. The Constitution (73rd Amendment) Act, 1992 effective from 24.04.1993 came into being. The objective was to bring into place an effective local self government through Panchayats as referred to in Part IX of the Constitution and the Municipalities referred to in Part IXA of the Constitution latter being incorporated by the Constitution (74th Amendment) Act,

1992 effective from 01.06.1993. The petitioners pleaded that Articles 243-243O deal with Gaon Sabhas, Constitution of Gram Panchayats, their duration, power and authority. Article 243L makes the provisions of Part IX applicable to Union Territories. Article 243K stipulates that the superintendence, direction and control of the preparation of electoral rolls and conduct of elections to the Panchayats would be done by State Election Commission. Article 243G deals with powers, authority and responsibilities of Panchayats in respect of implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule of the Constitution. The Eleventh Schedule in turn in Entry 2 deals with land improvement, implementation of land reforms, land consolidation and soil conservation. Entry 10 deals with Rural Housing and Entry Nos. 13 and 29 deal with maintenance of community assets. Article 243N provides for any law relating to Panchayats in force in a State immediately before commencement of the Constitution (Seventy-third Amendment) Act, 1992 which is inconsistent with the provisions of Part IX, would continue to be in force until amended or repealed by a competent Legislature or until the expiration of one year from such commencement, whichever is earlier. Thus, any law inconsistent with Part IX of the Constitution stood repealed after one year thereafter. The petitioners pleaded that Article 243E provides for duration of Panchayats and in case of dissolution of Panchayats, the

elections have to be held prior to the expiration of period of 6 months from the date of dissolution as per sub clause 3(b). The grievance is that such elections have not been held.

28. The petitioners also make a grievance about inadequacy of rural planning while making the Master Plan and funds allocation for the said purpose. The land measuring 945 bighas and 17 biswas allotted and released to the Rural Development Department for setting up the growth centres on lease basis vide letter dated 29.03.1996 and the lease was for a period of 99 years. The Rural Development Department was to use the land for the purposes for which it was allotted. Even the consolidation proceedings were on during the relevant time. The petitioners pleaded that the Government cannot exercise authority in respect of Gaon Sabha. The villagers are stated to be suffering on account of urbanization process and their interest is not being looked after. The petitioners further pleaded that on the one hand the power is sought to be exercised by the respondents under proviso to Section 154 of DLR Act while on the other hand the mere existence of rural areas is sought to be challenged by giving the same as reason for not holding elections to the Panchayats. The Delhi Panchayati Raj Act, 1954 ('The DPR Act' for short) is stated to be applicable to only such of the rural areas of Union Territory of Delhi except the land owned by the Central Government or local authority etc. The provisions of DLR Act are applicable only to rural areas to which the provisions of DPR Act are applicable.

29. The stand of the State Election Commission as per its affidavit affirmed on 03.10.2007 is that Section 507 of Delhi Municipal Corporation Act, 1957 ('The DMC Act' for short) provides for a Corporation with the previous approval of the Government to declare by a notification in an official gazette that a portion of rural area ceases to be included thereunder and should be included in the urban areas. The State Election Commission as per Article 243ZA of the Constitution has been undertaking periodic exercise of holding elections to Municipalities in Delhi, the last such exercise being in April, 2007. It has been pleaded that no voter shall be entitled to participate / vote for two different fora of local self government. Nothing more has been said.

30. The Govt. of NCT of Delhi in this behalf has filed an additional affidavit affirmed on 05.05.2009 as well as the counter affidavit to the amended petition. It has been explained that Part IX of the Constitution requires setting up of Gram Panchayats in rural areas and thus the DPR Act was enacted to provide such Gram Panchayats in rural areas of the NCT of Delhi. Part IXA of the Constitution lays down the form of local self government in non rural areas in the form of Municipalities. Article 243Q of the Constitution mandates creation of Municipality in the form of :

- a) A Nagar Panchayat for a transitional area that is to say an area in transition from a rural area to an urban area.
- b) A Municipal Council for a smaller urban area; and
- c) A Municipal Corporation of a larger urban area.

Article 243Q (2) defines a transitional area, a smaller urban area and a larger urban area to mean such area as the Government may specify by a public notification having regard to the population of the area, the density of the population therein, revenue generated for local administration, percentage of employment of non-agricultural activities, economic importance or other factors as deemed fit. Article 243Q reads as under:

“243Q. (1) There shall be constituted in every State,—

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, “a transitional area”, “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.”

31. A notification dated 31.05.1994 was issued by the LG of NCT of Delhi under Article 243Q(2) of the Constitution whereby the entire area falling within the local limits of New Delhi

Municipal Committee was declared as “*smaller urban area*” and the entire area of National Capital Territory of Delhi except the areas falling within the local limits of the New Delhi Municipal Council and the Delhi Cantonment Board as “*larger urban area*”. Not only that in pursuance to powers conferred under Article 243P(c) dealing with Metropolitan areas, the entire area of National Capital Territory of Delhi except the area falling within the local limits of the Delhi Cantonment Board was declared as “*metropolitan area*”. We may notice that ‘metropolitan area’ is defined under Article 243P(c) as under:

“(c) “Metropolitan area” means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;”

32. It is thus the submission of Govt. of NCT of Delhi that once the entire area of Delhi has been notified as either transitional area or smaller urban area or larger urban area or metropolitan area under Part IXA of the Constitution, it comes out of the ambit of Part IX of the Constitution and ceases to be rural area for purposes of provision of Gram Panchayat in NCT of Delhi and thus there was no requirement of holding elections for Gram Panchayats as was earlier required under DPR Act. In the absence of such Gram Panchayats and the residuary powers vesting in Chief Commissioner (LG) of Delhi under Section 160 and 161 of DLR Act, the Chief Commissioner (LG) has made alternate arrangement for carrying out the

work of Gaon Sabha or Gram Panchayat inasmuch as the Deputy Commissioner of the area concerned is the Chief Executive Officer through whom Gram Sabha Area is administered.

33. The Govt. of NCT of Delhi has clarified in its counter affidavit to the amended writ petition that the land never vested in the Central Government under Section 507 of the DMC Act though all village areas in Delhi are covered under Section 2(10) of the DMC Act and thus that Act is applicable to the entire area of the Capital Territory of Delhi except New Delhi and Delhi Cantonment areas. The respondents have also strongly protested at the endeavour of the petitioners to exclude a class of persons (particularly economically weaker sections) from being entitled to be accommodated in a housing project that may be constructed near the Village Kanjhawla.

34. The Govt. of NCT of Delhi has also clarified that no notification under Section 507 of the DMC Act has been issued, but have pointed out that the same will be imperative only when the character of a rural area is actually transformed from rural to urban, while, in the present case, the area in question, which was found to be in excess of the ordinary requirements of the Gaon Sabha was held to be excluded from vesting in the Gaon Sabha, was notified as 'metropolitan area'. The same remains under the administrative control and management of the Chief Commissioner (LG) of Delhi under Section 161 of the DLR Act.

35. A reference has been made to the Judgment in Saij Gram Panchayat v. State of Gujarat; AIR 1999 SC 826 to advance the plea that Article 243Q of the Constitution can change the coverage of lands in Gaon Sabha / Panchayat area to the coverage of the same in a municipal area by a public notification. It is in view thereof the plea has been raised that such a notification was issued under Article 243Q of the Constitution and thus the area of villages in Gaon Sabha area would be under the municipal jurisdiction of the DMC Act exclusively and the DPR Act would not be applicable to the area of Delhi. The statutory democratic institution for representation of people through Municipal Council is well in place for the past over 17 years.
36. Learned counsel for the respondents have also referred to few other judgments to advance their plea. In K.P.Raveendran and Anr. v. State of Kerala and Ors; AIR 2005 Kerala 319, it has been observed in the context of Article 243Q of Part IXA of the Constitution that a rural area after its transition to an urban area thereby becoming a smaller urban area or a larger urban area in terms of Article 243Q cannot be converted to be a rural area. Thus, the impugned de-linking of certain urban areas from the municipalities for being treated as rural areas was held to be unconstitutional and void. A municipality could never be converted to a village panchayat and it was wholly impermissible in the constitutional context in which Part IX and Part IXA have separately provided that two

types of local self government institutions could simultaneously govern.

37. Learned counsel also referred to the observations of the Supreme Court in State of UP and Ors. v. Pradhan Sangh Kshettra Samiti and Ors; 1995 Supp(2) SCC 305 where it was observed that the concept of a village cannot be confined by defining it as habitat according to anthropological concept, nor can village be determined according to the aspirations, chauvinism and wishes of the villagers as that would be against unity and integrity and social and economic progress of the country as well as contrary to the ideals of the Preamble to the Constitution and the Court cannot substitute its concept of a village for that determined by the State Govt. These observations were made in the context of definition of a village under Section 2(t) of the U.P. Panchayat Raj Act, 1947 and the acceptance of revenue village as a village by Governor under Section 2(t) was held as not inconsistent with Article 243G of the Constitution.

38. We have given a deep thought to this controversy arising from the claim of the petitioners that despite elections to the Municipalities, there is separate intrinsic right of the village residents to claim elections to the Panchayats in view of the provisions of Part IX of the Constitution. This plea has to be examined in the context of both Part IX and Part IX-A of the Constitution as well as the DMC Act and the notification issued by the State Government as also the law enunciated aforesaid.

39. The objective of incorporation of Part IX and Part IXA of the Constitution cannot be lost sight of. The system of local self government was not achieving the objective and, thus, it was considered appropriate to bring into place an effective local self government through Panchayats and Municipalities. The different areas go through transitions from village to small urban areas and/or to larger urban areas. All this has been envisaged under various provisions of the Constitution incorporated in Part IX and Part IXA.
40. It is not in dispute that elections to the Municipal Corporation have been held from time to time, the last such exercise being in April, 2007. The petitioners and similarly situated persons have had an opportunity to elect Municipal Councillors. The question, thus, arises that having elected Municipal Councillors, whether the petitioners and other such members of the village are further entitled to have an elected Panchayat? In our considered view, the answer to this question is in the negative.
41. The petitioners cannot be said to have a right to participate and vote for two different fora of local self government. We take note of the fact that a notification dated 31.05.1994 was issued by the Lieutenant Governor of NCT of Delhi under Article 243Q(2) in terms whereof the entire area of NCT of Delhi except the area falling within the local limits of NDMC and Delhi Cantonment Board was declared as '*large urban area*'. Not only that the entire area of NCT of Delhi except the area falling within local limits of Delhi Cantonment

Board was declared as '*metropolitan area*' in pursuance to a notification dated 31.05.1994. The area of the petitioners, thus, squarely falls within the ambit of Part IXA of the Constitution. The observations in K.P. Raveendran and Anr.'s case (supra) of the Kerala High Court are, thus, material to the effect that once an area has become a small or a large urban area in terms of Article 243Q of the Constitution, the same cannot be converted to be a rural area and that it was impermissible in the context of the Constitution as Part IX and Part IXA of the Constitution providing for two types of local self government institutions, which could not simultaneously govern.

42. The plea of the petitioners is predicated on the fact that on the one hand the respondents were seeking to exercise powers under Section 154 of the DLR Act while simultaneously claiming that there was no rural area for which Panchayat elections had to be held. This plea is negated on account of the fact that once the local self government is provided through elections to the Municipal Corporation, the administrative matters envisaged under the DLR Act are dealt with by the Deputy Commissioner of the area concerned, who is the Chief Executive Officer through whom Gaon Sabha area is administered under the overall administrative control and management of the Chief Commissioner (LG of Delhi) under Section 161 of the DLR Act. This is so as the area is in transition and the land has not lost its real character though it is forming part of the metropolitan area. What is important is

the fact that the power is sought to be exercised under the proviso to Section 154 of the DLR Act by the Chief Commissioner (LG) of Delhi, though inputs are given by the Deputy Commissioner, the details of which are set out hereinabove. We find nothing erroneous in this process.

43. We may add at this stage that since there cannot be a dual representation of local self government, the Municipal Councillor elected from the ward of the village of the petitioners is the elected representative. The administrative matters envisaged under the DLR Act are being dealt with by the Deputy Commissioner of the area concerned, who is not an elected person. In view of there being an elected representative, it is appropriate that the views of the Municipal Councillor is also taken into account by the Chief Commissioner (L.G.) before coming to a final conclusion whether to issue a notification under the proviso to sub-section (1) of Section 154 of the DLR Act or not.

44. We are, thus, of the considered view that as elections have been held to the Municipal Corporation including in the wards covering the area of Village Kanjhawla, the petitioners cannot claim a right of having another local self government body in the form of the Panchayat and claim a right of elections to be held in that behalf. There is, thus, no merit even in this second issue raised before us.

CONCLUSION :

45. We are, thus, of the view that the first challenge is premature while there is no basis for claiming elections to the

Panchayats. However, in order for the Chief Commissioner (L.G.) to come to a final conclusion whether a notification under the proviso to sub-section (1) of Section 154 of the DLR Act is to be issued or not, the petitioners should be given a right to file a representation as village residents and the views of the Municipal Councillors of the zone concerned should also be ascertained. It is only after doing the needful that the Chief Commissioner (L.G.) should take a final decision in respect of the issuance of a notification under the proviso to sub-section (1) of Section 154 of the DLR Act.

46. The writ petition stands disposed of with the aforesaid directions leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

MAY 07, 2010
dm

AJIT BHARIHOKE, J.