

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

Date of decision: 23rd March, 2011

+ W.P.(C) 1836/2011 & CM No.3907/2011 (for stay)

BABA VIRSA SINGH FOUNDATION

..... Petitioner

Through: Mr. K.V. Viswanathan, Sr. Adv.
with Mr. Niraj Singh & Ms. Neha S.
Verma, Advocates.

Versus

GAON SABHA, GADAIPUR AND ANR

..... Respondents

Through: Ms. Zubeda Begum & Ms. Sana
Ansari, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | | |
|----|---|----|
| 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 petition impugns the order dated 18th November, 2010 of the Financial Commissioner, Delhi dismissing the Revision petition preferred by the petitioner under Section 187 of the Delhi Land Reforms Act, 1954.

2. The Revision petition was preferred against the inaction of the Revenue Assistant to enter the name of the petitioner as the person in possession of the land. The Financial Commissioner has dismissed the Revision petition on two grounds. Firstly, that the order against which Revision petition was preferred had not been produced and secondly on the ground that the application of the petitioner under Section 85 of the Act for declaration of the Bhumidari Rights also stood dismissed and appeal whereagainst was pending before the Addl. Collector.

3. As far as the first of the aforesaid grounds is concerned, it is contended that the Revision petition was preferred against the failure of the Revenue Assistant to pass any order on the application of the petitioner for entering its name as the person in possession; as such there was no question of any order being produced. It is contended that Revision petition lies against such failure also.

4. With respect to the second contention, it is contended that the declaration of Bhumidari Rights is distinct from the entry in the revenue records as the person in possession in as much as even a non Bhumidar is entitled to have his possession so recorded.

5. The writ petition came up first before this Court on 21st March, 2011 when attention of the senior counsel for the petitioner was invited to the

judgment dated 16th September, 2010 of this Bench in W.P.(C) No.5807/2010 titled ***Bhagmal Vs. Gaon Sabha, Aya Nagar*** and appeal whereagainst being LPA No.788/2010 was dismissed on 9th November, 2010. In that case also, proceedings for declaration of Bhumidari Rights, as well as for eviction were pending. It was held that during the pendency of said proceedings, direction for making such entries in revenue record would give unfair indulgence to the petitioners and that if they succeed in pending proceedings, declaration sought could be made. On request, the matter was posted for further consideration for today.

6. The senior counsel for the petitioner has today contended that the judgment in ***Bhagmal*** (supra) would not apply inasmuch as in that case besides the proceedings under Section 85, proceedings for eviction under Section 86A had also been initiated. It is contended that no proceedings for eviction against the petitioner herein have been initiated. It is further contended that even in the event of the claim of the petitioner of Bhumidhari Rights being ultimately dismissed, the petitioner would still remain in possession and would still be entitled to have its name entered in the Khasra Girdawari as the person in possession. It is yet further contended that the whole purpose of recording the name of the person in possession is when that person is not the Bhumidhar and if the person is the Bhumidar in possession, the question of entering the name in the Khasra Girdawari as the person in possession would not arise.

7. I am afraid, the distinction sought to be carved out from ***Bhagmal*** (supra) is immaterial. The ratio of the judgment in ***Bhagmal*** and which was pronounced after considering the dicta of Division Bench of this court in ***Balbir Singh Vs. A.D.M. (Revenue)*** 57 (1995) DLT 547 and of the Supreme Court in ***A.D.M. (Revenue), Delhi Administration Vs. Shri Ram*** (2000) 54 DRJ 345, is that during the pendency of proceedings a direction for recording such entries cannot be sought or granted inasmuch as the same would give unfair advantage to one party to the prejudice of the other and that the said claims have to await the decision of the proceedings pending before the Revenue Authorities.

8. The Division Bench while dismissing the Intra Court Appeal against ***Bhagmal*** also observed that the matter has to be adjudicated by the competent authority under the Delhi Land Reforms Act, 1954 and which authority is to also determine the status of the parties.

9. The counsel for the respondents appearing on advance notice has contended that the petitioner is not even in possession of the land and this writ petition has been filed to create evidence of being in possession. Attention is invited to the order dated 27th May, 2005 of the Revenue Assistant dismissing the application of the petitioner under Section 85 of the Reforms Act holding that the petitioner had produced Khasra

Girdawari only of two years i.e. 1981-82 and 1982-83 to show possession and had thus not passed the minimum requirement for institution of a suit under Section 85, of three years.

10. Faced with the aforesaid, the senior counsel for the petitioner contends that the revenue entries of possession after 1982-83 could not be obtained owing to the amendment brought about at that time to the Delhi Land Revenue Rules enabling the Revenue Authorities to not record the correct possession as existing on the spot and which amendment was subsequently struck down in **Balbir Singh** and which judgment was upheld in **Shri Ram** (supra). He thus contends that there is explanation for the petitioner being not able to get the entries after the year 1982-83 though continued to be in possession. Attention in this regard is invited to the copies of the applications filed at pages 46 to 74 of the paper book for having the possession so recorded. It is further contended that the occasion for filing the revision petition to the Financial Commissioner arose only because the Tehsildar inspite of such applications, was not passing any order whatsoever. It is further contended that the said applications were required to be disposed of and even if according to the respondents, the petitioner was not in possession as is being contended today in the Court, such an order ought to have been made by the Tehsildar and is now required to be directed to be made.

11. The counsel for the respondents appearing on advance notice states that the applications copies of which have been filed as aforesaid do not bear any acknowledgement and the petitioner has not placed anything on record to show that any such applications were made.

12. I also find that the Revenue Assistant, while dismissing the suit of the petitioner for declaration of Bhumidari Rights has held that the petitioner had not shown any documents of having made efforts to get its name entered in Khasra Girdawari in years subsequent to 1982-83. The said observations appears to suggest that the copies of the applications as have been produced before this Court were not produced before the Revenue Assistant, though the senior counsel for the petitioner contends otherwise and further urges that a ground to the said effect was also taken in the appeal memo.

13. I am of the opinion that since the suit of the petitioner under Section 85 has been dismissed on the same grounds as are now being urged before this Court, the reasoning given in *Bhagmal* and in appeal thereagainst is squarely applicable and no direction as sought by the petitioner in the present writ petition can be issued.

14. The senior counsel for the petitioner at this stage states that the

petitioner be permitted to take up the matter in appeal pending before the Additional Collector. It will be open to the petitioner if entitled in law to urge the said ground.

15. The senior counsel for the petitioner next seeks protection from dispossession for a period of two weeks to enable the petitioner to make the necessary application to the Additional Collector.

16. However in view of the possession of the petitioner being disputed by the respondents, the said relief or even the relief of *status quo*, without recording as to what is the status today, is not deemed expedient.

17. The writ petition is therefore dismissed with liberty however to the petitioner to make application if any maintainable before the Additional Collector, in appeal already pending.

No order as to costs.

Copy of this order be given *Dasti*.

**RAJIV SAHAI ENDLAW
(JUDGE)**

23rd MARCH, 2011
pp/bs