

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

Date of decision: 5th May, 2011

+ W.P.(C) 2983/2011 & CM No.6343/2011 (for interim relief)

% RAM NARAIN GUPTA & ORS Petitioners

Through: Mr. A.K. Singla, Sr. Adv. with Mr.
Sheetesh Khanna, Adv.

Versus

GAON SABHA, SIRASPUR Respondent

Through: Ms. Shobhana Takiar, Adv.

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 writ petition impugns the order dated 21st February, 2011 of the Revenue Assistant/S.D.M., Narela disposing of proceedings under Section 81 of the Delhi Land Reforms (DLR) Act, 1954 against the petitioner no.2 Sh. Atul Gupta with respect to the land bearing Khasra No.729 Min (2-6)

situated in the revenue estate of Village-Siraspur. The Revenue Assistant/S.D.M. has noticed the report of the Halqa Patwari that the land had been put to non-agricultural use for unauthorized construction contravening provisions of Section 81 (supra). Accordingly, it was directed that the land be converted back into agricultural purpose within three months from the date of the order and if it is not so converted back to agricultural purposes, the petitioner no.2 shall stand ejected and the land shall automatically vest in the Gaon Sabha, Siraspur.

2. It has at the outset been enquired whether there is no remedy under the DLR Act itself against such an order.

3. The counsel for the respondent appearing on advance notice has drawn attention to Serial No.17 in Schedule I to the Act which provides of a remedy of appeal to the Deputy Commissioner against the order of the Revenue Assistant/S.D.M. under Section 81 of the Act.

4. The senior counsel for the petitioners however has invited attention to Rules 13 & 14 of Appendix VI to the Delhi Land Reforms Rules, 1954.

The said Appendix VI prescribes the procedure of Revenue Courts and Revenue Officers. Rule 13 provides that whenever any party to the proceedings neglects to attend on the date specified in the summons or on any date to which the case has been postponed, the Court may dismiss the case for default or may hear to determine it *ex parte*. Rule 14 provides that no appeal shall lie from an order passed *ex parte* or by default under Rule 13.

5. The senior counsel for the petitioners contends that the order dated 21st February, 2011 aforesaid is an *ex parte* order. It is contended that a bare reading of the order does not show that any notice was issued to the petitioner no.2 or other petitioners or that they had failed to appear. He contends that thus the remedy of appeal to the Deputy Commissioner is not available. Reliance in this regard is placed on the Division Bench judgment of this Court in ***Kamal Kant Baporia Vs. G.S. Kirari Suleman Nagar*** 102 (2003) DLT 117.

6. All that the Division Bench has held in the judgment aforesaid is that even though Section 81 does not provide for any notice but notice

before taking any action has to be issued in compliance of principles of natural justice. It is not a judgment on the remedy of appeal under the Act and the Rules.

7. Even if the argument of the senior counsel for the petitioners of no notice having been given to the petitioners were to be accepted, the same would still not negate the remedy of appeal under Rule 14 to Appendix VI (supra). Rule 14 negates the remedy of appeal only when the order is *ex parte* under Rule 13. Under Rule 13, the order can be *ex parte* only after issuance of summons and failure to appear. If as contended by the petitioners, no summons were issued and there was no failure to appear, the order would not fall within the ambit of Rule 14 so as to bar the remedy of appeal.

8. Moreover, Rule 14 itself though barring the remedy of appeal permits the party prejudiced by such *ex parte* order under Rule 13 to approach the Officer who had made such order for setting aside of the said order. Thus either way, alternative remedies are available to the petitioners and which have not been availed of.

9. The senior counsel for the petitioners has also purported to contend that in the judgment in ***Kamal Kant Baporia*** aforesaid, the writ petition was entertained. However, if the judgment has not noticed the availability of the alternative remedy, the same cannot constitute a precedent for the same.

10. It has been enquired from the senior counsel for the petitioners whether the petitioners in the last nearly three months since the order, have applied for or inspected the file of the Revenue Assistant/S.D.M. to find out whether any notice was issued or not. It is fairly admitted that no such effort has been made.

11. The senior counsel for the petitioners has further contended that the area stands urbanized. Reliance in this regard is placed on House Tax Assessment. Merely because house tax has been assessed would not mean that the area has been urbanized. The Division Bench of this Court in ***Indu Khorana Vs. Gram Sabha*** MANU/DE/0969/2010 held that the provisions of the DLR Act would cease to apply only upon the issuance of a Notification under Section 507 of the DMC Act. No such Notification has

been relied upon by the petitioners.

12. The senior counsel for the petitioners has further contended that while there is construction in the entire area, only the petitioners are being victimized.

13. The Apex Court recently in *State of Bihar Vs. Kameshwar Prasad Singh* (2000) 9 SCC 94 and in *Sarup Singh Vs. UOI* AIR 2011 SC 514 has reiterated that there can be no claim on the basis of the negative equality.

14. The writ petition is thus found to be not maintainable; the remedy of the petitioners is before the alternative fora as aforesaid.

15. The senior counsel for the petitioners seeks a direction for the appropriate fora to consider the matter without objection as to the limitation. The provisions aforesaid empower the foras to on sufficient cause being shown condone the delay in approaching. However, since the senior counsel for the petitioners states that the petitioners were guided by the Division Bench in *Kamal Kant Baporia*, it is deemed expedient to

order that subject to the appropriate fora being approached on or before 13th May, 2011, the concerned fora shall consider the matter without objection as to the limitation. This is however subject to the condition that the petitioners shall not alienate, encumber or part with possession of the land/property and shall not make any additions, alterations or constructions thereon.

16. The writ petition is dismissed as not maintainable with liberty to avail remedy and to take all pleas as taken herein before the appropriate fora.

No order as to costs.

CM No.6344/2011 (for exemption)

Allowed, subject to just exceptions.

Copy of this order be given *Dasti* under signature of the Court Master.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 05, 2011

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