

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

% *Judgment reserved on : 02nd May, 2011*
Judgment delivered on : 06th May, 2011

+ **R.S.A.No. 269/2007 & CM No. 14666/2007 (for stay)**

LEKH RAM THROUGH HIS LR'S **.....Appellants**

Through: Mr. Madan Lal Sharma and
Mr. Varun Nischal, Advocates.

Versus

SHYAM LAL THROUGH HIS LR'S **.....Respondents**

Through: Mr. Keshav Dayal, Sr.
Advocate along with Mr. D.K.
Tyagi and Mr. Sanjay Kumar
Singh, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1. This appeal has impugned the judgment and decree dated 10.09.2007 which had endorsed the finding of the trial judge whereby the suit filed by the plaintiff Lekh Ram seeking the decree of permanent injunction restraining the defendant from

dispossessing the plaintiff from the suit land/interfering in his peaceful possession had been dismissed.

2. The case of the plaintiff is that he was a Biswadar in the revenue estate of Badli, Delhi State, Delhi; he was having agricultural land as well as residential plots in this revenue estate. The Consolidation of Holdings under the provisions of the East Punjab Holdings (Consolidation and prevention of fragmentation) Act, 1948 took place in the year 1953-54. Plaintiff was allotted agricultural land, manure pits, residential plot inside the Lal Dora of the village along with many other village holders. He was allotted plot no. 42/95 measuring 0-6 Biswas which is the suit property. He has been allotted this 6 Biswas as co-owner of Pana Haveli in the shape of a manure pit, which has been converted in the shape of an enclosure/gher/gitwar; pacca boundary wall has been raised around it by the plaintiff. He has been in possession of this aforementioned suit property since 1953-54. He has been shown as an occupier of this property. In 1976, the Pradhan of Goan Sabha allotted certain plots on papers out of khasra no. 42/9/5; possession was however never delivered to any allottee. On 15.01.1983, the Halka Patwari and other officials threatened to demarcate plots of certain other plot holders, who were allotted

these plots. Plaintiff apprehended dispossession. He filed a suit for permanent injunction. Injunction was not granted. The appeal against that order was dismissed. Thereafter, the suit was withdrawn; the plaintiff, however, continued to remain in occupancy and in possession of the land. The said land has since been urbanized. By a notification under Section 507 of Delhi Municipal Corporation (DMC), the Gaon Sabha had ceased to exist; the rights and liabilities of the Gaon Sabha are now vested with the Central Government. Defendant nos. 1 and 2 were threatening the plaintiff from dispossession. Suit was accordingly filed.

3. Defendant in his written statement had defended the suit. It was stated that this court had no jurisdiction to entertain the suit; proceedings under the provisions of DLRA are alone maintainable. Jurisdiction of the Civil Court is barred. It was denied that the plaintiff is the owner or in possession of the suit land; plaintiff had intentionally concealed material facts; the Khasra Girdawari relied upon by him was also forged. It was admitted that the Gaon Sabha had allotted land to certain landless persons including the defendants; defendants are in possession of the suit land; no

cause of action has arisen in favour of the plaintiff. Suit of the plaintiff was liable to be dismissed.

4. On the pleadings of the parties, the following issues were framed:-

"1) Whether the suit of the plaintiff is not maintainable in view of the provisions of Delhi Land Reforms Act? OPD

2. Whether the plaintiff has got any right, title or interest with respect to the suit property? OPP

3. Whether the plaintiff is entitled to relief for permanent injunction as prayed for? OPP

4. Relief."

5. Oral and documentary evidence was led. An application under Order 7 Rule 11 of the Code had also been filed. The suit of the plaintiff was dismissed. This was after examination of the provisions of Section 150 (3) of the DLRA which is also the argument now vehemently raised before this court. The trial judge had returned a finding on this argument in the following manner. The relevant extract reads as follows:-

"The careful perusal of Section 150 (3) (f) of DLR Act shows that provisions of DLR Act still applied to the provisions U/s 84, 85, 86, 86A, 87 and any other provision of the said Act relating to ejectment of persons even after vesting of land in the Central Government by virtue of notification U/s 507 DMC Act issued in respect of said land. The Clause (f) of Section 150 (3)

starts with non obstante clause and therefore, it has over-riding effect over Clause-(b) of Sub Section 2 of Section 1 of DLR Act which excludes the area included in Estate owned by Central Government from the purview of DLR Act. Not only this, section 3(13) which deals with the meaning of term .Land. excludes only such land from the purview of DLR Act in respect of which there is any notification issued by Chief Commissioner. In other words, unless there is any notification U/s 3 (13) (d) of DLR Act issued by Chief Commissioner, such land would still be governed by provisions of DLR Act. While taking this view, I am further fortified by judgment Division Bench of our own High Court as AIR 1990 Delhi 282 (DB) wherein it has been held in Para-27 of the judgment that once at the commencement of DLR Act, the Act is applied then such land still continues to be the land governed by the said Act and cannot be taken out of said Act by any subsequent Act. It has been further held that there should be notification by the Chief Commissioner in respect of buildings and in respect of land occupied by buildings adjacent to Delhi Town and New Delhi Town and only then they can be taken out from the purview of DLR Act. No other authority or case law has been brought to the notice of the Court which has taken any other view.

The conjoint reading of Section 3 (13) (d) and Section 150 (3) (a) to (d) and Section 150 (3) (f) of DLR Act shows that suit land is still governed by provisions of DLR Act so far as the proceedings U/s 84, 85, 86, 86A, 87 and any other provision relating to ejectment is concerned. As rightly argued by Ld. Counsel for defendants no. 1 and 2 that plaintiff has got right to file a petition for declaration of his bhumidari right U/s 85 of DLR Act on the basis of his alleged possession for more than three years before Revenue Assistant. It is not the case of plaintiff that there is any such declration of bhumidari right in his favour by the Revenue Court. For this reason, the argument raised on behalf of plaintiff that he could not have sought

declaration of his bhumidari rights from the Revenue Courts due to non applicability of provisions of DLR Act, holds no ground. In the absence of declaration of bhumidari rights in favour of plaintiff and keeping in view the averments made on behalf of plaintiff himself that suit land vested in Central Government, this Court is of the view that the possession of plaintiff, if any, over the disputed land is without any right, title or interest and the grant of injunction sought by plaintiff indirectly shall tantamount to declaration of his bhumidari rights which civil court cannot do being barred by Section 185 of DLR Act. The Hon'ble Apex Court in the celebrated judgment of .Hatti Vs. Sunder Singh. reported as AIR 1971 SC 2320 has laid down the said proposition of law which is binding on this court in view of the Article 141 of the Constitution of India.”

- 6 This was endorsed in first appeal.
7. The first appellate court had also revisited this argument and has noted as under:-

”Delhi Land Reforms Act is a code in itself which provides for all remedies such as declaration of bhumidari rights as well as ejectment of unauthorised occupants. Only two persons are recognized within the scheme of Delhi Land Reforms Act that is the recorded bhumidar or a Assami i.e., tenant or bhumidar unless and until a person claims his right as bhumidar or Asami he can not be recognized to have any right in respect of agricultural land.

11. As far as the urbanization of the land is concerned perusal of section 507 of Delhi Municipal Corporation Act shows, that some of the concessions are granted to the bhumidar or Asami but it does not take away the applicability of the various provisions of Delhi Land Reforms

Act and in particular provisions like section 33, 43 and 185 of Delhi Land Reforms Act.

8. This is a second appeal. It has been admitted and on 14.11.2007, the following substantial question of law was formulated. It inter alia reads as follows:-

“Whether on urbanization of a village the land in the village abadi continues to be government by the provisions of the Delhi Land Reforms Act, 1954?”

9. On behalf of the appellant, it has been urged that admittedly the disputed land has since been urbanized under the provisions of Section 507 (a) of the DMC Act; it is excluded from the purview of the DLRA. Reliance has been placed upon the judgment of this court reported in W.P.C. 4143/2003 Smt. Indu Khorana Vs. Gram Sabha & Ors. to support this submission. It is pointed out that once the rural area has been urbanized by a notification, the provisions of the DLRA become inapplicable.

10. Arguments have been countered. It is pointed out that the suit of the present nature was rightly held to be outside the purview of the civil court; the court below had rightly noted that the plaintiff was actually seeking a declaration of his bhumidari rights which issue could be addressed only by the revenue court; the jurisdiction of the civil court was barred. It is pointed out that

the judgment relied upon by the learned counsel for the appellant has no application as in this judgment the provisions of Section 150 DLRA had not been dealt with. The impugned judgment calls for no interference.

11. Record has been perused. The suit property comprises of 6 biswas of land located in Khasra No. 42/9/5. Admittedly, a notification has been issued under Section 507 (a) of the DMC Act notifying this land as urban.

12. The controversy has now been set at rest by the reference answered by the Bench of this Court in the case of Indu Khorana (supra). Relying upon the earlier decision of this court reported in Trikha Ram Vs. Sahib Ram & Anr. 69(1997) DLT 749 and Madho Prasad Vs. Ram Kishan & Ors. 2001 (7) AD (Delhi) 721, it has been held that once by virtue of a notification under Section 507 (a) of DMC Act the land is declared to be an urban land, it could no longer be classified as village abadi land within the definition of land under DLRA and the provisions of DLRA would not be applicable. Unfortunately these judgments were not considered by the two courts below. In CS(OS) 379/2003 Sh. Sis Ram & Ors. Vs. Lallu Singh & Ors. decided on 09.5.2006, in a suit for partition of abadi land of village Mauzpur which by a notification issued RSA No. 269/2007

under Section 507 (a) of the DMC Act had been declared as an urban area; it was held that the urbanization of the land by virtue of the said notification would be excluded from the provisions of DLRA.

13. In this view of the matter, it is clear that the impugned judgment is liable to be set aside. Admittedly, in this case the suit land had been declared as urban land in view of the admitted notification under Section 507(a) of the DMC Act; once the land had been declared as urban land a suit before the Civil Court was well maintainable; provisions of DLRA stood excluded. Impugned judgment is accordingly set aside. Matter is remanded back to the trial judge for decision on its merit. For the said purpose parties are directed to appear before learned District & Sessions Judge (Central) on 15.5.2011 at 10.30 AM for assigning the case to the concerned Civil Court. Question of law is answered accordingly in favour of the appellant.

14. Appeal is allowed in the above terms.

INDERMEET KAUR, J.

MAY 06, 2011

SS/nandan