

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

Date of decision: 20th January, 2011

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W.P.(C) 101/2011

SHRI FATEH SINGH

.... PETITIONER

Through: Mr. Ravinder Sethi, Sr. Advocate
with Mr. Vipin K. Singh, Advocate.

Versus

THE FINANCIAL COMMISSIONER

.... RESPONDENT

Through: Mr. V.K. Tandon, Advocate for R-1
to 3.
Mr. B.S. Mann with Mr. V.P. Rana
and Mr. Arvind Rana, Advocates for
R- 4 to 7.

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 consistent orders of the Revenue Assistant, Additional Collector and the Financial Commissioner decreeing the suit for ejectment under Section 84 of the Delhi Land Reforms Act, 1954 (Reforms Act) filed by the respondents no. 4 to 7 against the petitioner and also allowing the application of the respondents no.4 to 7 for review of order correcting the Khasra Girdawari for the year 1984 and recording the name of

the petitioner to be in cultivatory possession of the land.

2. The defence of the petitioner to the suit *inter alia* was that he was in possession since prior to 1968 and therefore suit for ejectment instituted in the year 1985 was barred by time. The petitioner in support thereof relied upon a suit for declaration and injunction filed by him against the predecessor in interest of the respondents no.4 to 7, which suit was dismissed by the Civil Judge but the Senior Civil Judge in appeal, with the consent of the predecessor of the respondents no.4 to 7 vide judgment dated 30th September, 1968 had declared the petitioner to be in possession of the land and enjoined the predecessor of the respondents no.4 to 7 from forcibly dispossessing the petitioner therefrom. The petitioner thus contended that he had been in possession since prior to 1968.

3. It was *inter alia* the case of the respondents 4 to 7 that the petitioner had entered into possession of the land after surreptitiously obtaining correction of Khasra Girdawari in his favour in 1984.

4. The Financial Commissioner on discussion of the provisions of the Delhi Land Revenue Act, 1954 (Revenue Act) and Reforms Act has held that under the said laws the possession is required to be recorded every agricultural season and that for none of the years from 1968 till 1984 the possession of the petitioner had been recorded. It was further held that had the petitioner been in possession, his possession would have definitely been recorded but on the contrary the recorded possession was of the respondents

no.4 to 7 / their predecessor. It was thus held that the suit was within limitation and time.

5. The matter had come up before this Court first on 10th January, 2011 when it was inquired from the senior counsel for the petitioner as to what was wrong in the order of the Financial Commissioner. It was put to him that this Court in exercise of writ jurisdiction would interfere only upon being shown that the reasoning given by the Financial Commissioner was untenable in law. It was felt that the land being agricultural and possession whereof in accordance with law governing the said land is required to be recorded regularly, the orders of the foras below were based on cogent legal logic and did not require any interference.

6. The senior counsel for the petitioner had however contended that the possession of the petitioner having been admitted in the Civil Court and the predecessor of the respondents 4 to 7 having been enjoined from forcibly dispossessing the petitioner, the respondents 4 to 7 without pleading as to how and when the petitioner had been dispossessed thereafter, could not have filed a suit for ejectment claiming to have been in possession of the land. The senior counsel had then sought adjournment to cite case law on the presumption of continuity of possession qua agricultural land governed by the law aforesaid.

7. The counsel for the respondents 1 to 3 and the counsel for the respondents 4 to 7 appear on advance notice and have also been heard.

8. The senior counsel for the petitioner has today relied on *Nathoo Lal Vs. Durga Prasad* AIR 1954 SC 355, in paragraph 12 whereof it has been observed that the law presumes in favour of continuity of possession. Attention in this regard is also invited to the Full Bench judgment of the Patna High Court in *Sudama Devi Vs. Jogendra Choudhary* AIR 1987 Patna 239 also observing that there is a settled general rule that if a person is specifically found in possession of an estate at a prior date, there is a presumption of continuity of such possession till the contrary is established; reliance was placed on *Ghoghar Raut Vs. Jagannath Prasad Singh* AIR 1947 Patna 475 laying down that the general rule of evidence is in favour of presuming the continuity of things shown to exist at a prior date. The senior counsel for the petitioner in this regard has also referred to Section 114 of the Indian Evidence Act.

9. However all the aforesaid judgments did not relate to agricultural land and/or did not relate to property covered by legislation as the Revenue Act or the Reforms Act which are special law relating to agricultural land and the Supreme Court in *Hatti v. Sunder Singh* (1970) 2 SCC 841 held the Reforms Act to be a complete code in itself. The counsel for the respondents 4 to 7 has in this regard rightly drawn attention to Section 20 of the Revenue Act which provides for maintenance of a Record of Rights for each village consisting of a register of all persons cultivating or otherwise occupying land and specifying other prescribed particulars; Section 21 requiring the Deputy Commissioner to maintain the Record-of Rights, and

for that purpose to, annually or at such longer intervals as may be directed, cause to be prepared an amended register mentioned in Section 20 and to cause to be recorded in the Annual Register all changes that may take place and any transaction that may affect any of the rights or interests recorded; Section 26 enabling the Deputy Commissioner to either on his own or on the application of any person, correct any mistake or error in the Annual Register; and Sections 30 and 41 creating a statutory presumption of correctness of the entries in the Annual Registers unless the contrary is proved. Attention is also invited to Rule 49 of the Delhi Land Revenue Rules, 1962 requiring the *patwari* to make three field-to-field inspections every year and Rule 56 requiring entries to be made in accordance with the actual facts found at site. It is contended that under the said rules if the *patwari* finds the *bhumidar* of the land himself in cultivatory possession of the land, entry in that regard is to be made in Form P-4 prescribed under the rules; if the person other than *bhumidar* is found in cultivatory possession then entry is to be made in Form P-5 and if the land belongs to the *gaon sabha*, entry is to be made in Form P-5A. Attention is next invited to Rules 66 and 67 which require the *partwari* to send Form P5 to the *kanungo* and in which case a notice is required to be sent to the *bhumidar*. It is argued that since the respondents 4 to 7 and/or their predecessors are admittedly the recorded *bhumidars* of the land, had the petitioner been in cultivatory possession of the land as claimed by him, not only would his cultivatory possession have been recorded in Form P-5 and which has not been done but

notice thereof would have been also sent by the *kanungo* to the respondents 4 to 7 or their predecessors and which also has not been done.

10. The counsel for the respondents 4 to 7 in this regard also relies upon ***Balwant Singh Vs. Daulat Singh*** (1997) 7 SCC 137 laying down that entries under the Tenancy and Land Laws must be taken as correct unless the contrary is established and to ***Vishwa Vijay Bharati Vs. Fakhrul Hassan*** (1976) 3 SCC 642 also laying down that the entries in revenue record ought generally to be accepted at their face value and Courts should not embark upon an appellate inquiry into their correctness and also laying down that the said presumption of correctness would however not extend to forged or fraudulent entries.

11. To meet the arguments of the senior counsel for the petitioner of continuity of possession, reliance is placed on ***Raj Bali Singh Vs. The Deputy Director of Consolidation*** AIR 1972 Allahabad 291 laying down that there is no presumption about continuity of possession by a trespasser and on ***Phoolwati Vs Ram Dei*** 150 (2008) DLT 105 laying down that possession of agricultural land goes with title and revenue record and the person aggrieved is provided remedy under the Delhi Land Reforms Act.

12. I am of the considered opinion that the judgments relied upon by the senior counsel for the petitioner on presumption as to continuity of possession have no application to the facts of the present case. The said judgments relate to built-up urban property. We are here, concerned with

open agricultural land which is governed by special legislation. The presumption with respect to possession of open land even otherwise is, of the same being in possession of the owner/title holder (see *Ishmali Devi v. DDA* MANU/DE/1838/2009), while there is no such presumption with respect to the built-up property. The Reforms Act has done away with the concept of ownership of land and has created titles only as a *bhumidar* and as an *asami* with respect to the said land.

13. Section 22 of the Reforms Act vests in *bhumidar* or *asami* the right of exclusive possession of the land and special provisions have been made with respect to the mortgage, transfer, letting and inheritance and partitioning of the said land. Section 65A makes a provision for extinguishment of a right as a *bhumidar* or *asami* in the event of non user of the land for two consecutive agricultural years for purposes connected with agriculture. Under Section 85, the person in possession of agricultural land becomes the *bhumidar* thereof if the *bhumidar* does not bring a suit under Section 84 of the Act within the period provided therefor.

14. It would thus be seen that the possession of agricultural land under the Reforms Act is entirely different from the possession of other properties to which the judgments cited by the senior counsel for the petitioner pertain. I therefore find that the view taken in the impugned order by the Financial Commissioner of the respondents 4 to 7 being in possession of the land as evident from the revenue entries and thus the suit for ejectment of the

petitioner filed by them being within time is a reasonable plausible view. This Court in exercise of jurisdiction under Article 226 would not interfere with a view taken by the fora below which is a plausible view, even if this Court may have taken a different view. If the same were to be permitted, it would reduce the jurisdiction under Article 226 to that of appellate jurisdiction and which has not been permitted by the legislature. The finding of the petitioner being not in possession and respondents 4 to 7 being in possession is essentially a finding of fact. The Apex Court in **Ashok Kumar v. Sita Ram** (2001) 4 SCC 478 held that a finding of fact recorded by the final court of fact should not ordinarily be interfered with by the High Court in exercise of writ jurisdiction, unless the Court is satisfied that the finding is vitiated by manifest error of law or is patently perverse. The High Court should not interfere with a finding of fact simply because it feels persuaded to take a different view on the material on record. Further it was held that where order passed by the statutory authority vested with power to act quasi-judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction the High Court is not expected to interfere with the final order passed by the statutory authority unless the order suffers from manifest error and if it is allowed to stand it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another appellate Court in the matter.

15. Therefore in the case of agricultural land and in the absence of the cultivatory possession of the petitioner being recorded with respect to the

land at any time, merely on the basis of the consent order/decreed of the year 1968 of the Civil Court, it cannot be said that the petitioner is presumed to have been in possession or that the respondents 4 to 7 were required to show as to when they took possession from the petitioner. The respondents 4 to 7 have shown their possession from the revenue records and on which the fora below have rightly placed reliance. There is another aspect of the matter. The petitioner if had been in possession, in view of the litigious nature of the relationship with the respondents 4 to 7 and/or their predecessor, in the normal course of human behavior would have applied under Section 85 of the Reforms Act for declaration of himself as the *bhumidar*. Nothing of this nature was done by the petitioner. The same also indicates that the petitioner was not in possession of the land.

16. It is not as if the petitioner was ignorant of his rights. The petitioner in the year 1984 did get his cultivatory possession recorded with respect to the said land. The petitioner even then did not contend that the entries in the revenue record for the earlier years of the respondents 4 to 7 / their predecessors being in cultivatory possession were erroneous and did not apply for rectification thereof. As aforesaid, it was open to the petitioner to contend that the entries of cultivatory possession of the respondents 4 to 7 were fraudulent. Not only was any such step not taken but there is no such plea in any of the proceedings also. All this is also supportive of the reasoning in the order of the Financial Commissioner.

17. The senior counsel for the petitioner has vehemently contended that the Revenue Courts were in error in casting doubts about the decree of the Civil Courts or in observing that the same was obtained by the petitioner by putting forward some persons other than the predecessor of the respondents 4 to 7. He contends that the orders of the fora below are liable to be interfered with on this ground alone.

18. Though the counsel for the respondents 4 to 7 has contended that the petitioner failed to prove the decree of the Civil Court before the fora below but in my opinion there is merit in the contention of the petitioner that it was not open to the Revenue Courts to cast any doubt about the decree of the Civil Court. The senior counsel for the petitioner in this regard has rightly relied upon *Kirpa Ram (Decd) Thr. LRS. Vs. Surendra Deo Gaur* 153 (2008) DLT 526 and order of the Financial Commissioner in *Mehar Chand Vs. Ram Parwar* 23(1983) DLT 509 in this regard. However in my opinion, a wrong reasoning given by the fora below on one aspect would still not call for interference by this Court if the reasoning on other aspects and on which aspects alone the orders can stand is cogent and valid.

19. The senior counsel for the petitioner has next contended that the entries in the records of the Irrigation Department were in favour of the petitioner and have been wrongly rejected by the Financial Commissioner. The counsel for the respondents 4 to 7 in opposition to the said plea has referred to the order dated 15th May, 1984 in RSA 16/1984 titled *Laxman*

Singh Vs. Nathoo Singh rejecting the *girdawari* of Irrigation Department on the ground that the same are not prepared at the spot but in the office itself. I am even otherwise of the opinion that in the face of the statutory provisions in Reforms Act and the Revenue Act and the Rules framed thereunder, the entries of the Irrigation Department which have no statutory basis cannot come to the rescue of the petitioner.

20. The senior counsel for the petitioner has next contended that the order dated 19th October, 2010 of the Financial Commissioner impugned in the present petition is diametrically opposite to the earlier order dated 30th November, 1995 of the Financial Commissioner in favour of the petitioner and whereagainst the respondents 4 to 7 had preferred WP(C) 4798/1995; the said writ petition was disposed of by consent order dated 14th January, 2010 wherein the petitioner had agreed to the order dated 30th November, 1995 of the Financial Commissioner being set aside and to the remand of the matter to the Financial Commissioner for decision afresh. I am of the view that once the petitioner had consented to setting aside of the order dated 30th November, 1995 of the Financial Commissioner and to remand for decision afresh, the petitioner cannot now place any reliance on the earlier order which has been set aside.

21. The senior counsel for the petitioner has in rejoinder lastly contended that vide order dated 14th January, 2010 in W.P.(C) No.4798/1995 earlier preferred by respondents 4 to 7, only decision dated 30th November, 1995 of

the Financial Commissioner dismissing the suit of the respondents 4 to 7 against the petitioner was set aside and matter remanded for adjudication afresh but the order of the Financial Commissioner also dated 30th November, 1995 dismissing the review by the respondents 4 to 7 of the entry of the name of the petitioner as in cultivatory possession of the land for the year 1984 was not set aside. It is contended that though respondents 4 to 7 had preferred a writ petition being W.P.(C) No.53/1996 against the said order also but the same was disposed of as infructuous in view of the order dated 14th January, 2010 in WP(C)4798/1995. It is contended that thus the earlier order of the Financial Commissioner dismissing the review has attained finality. It is argued that the order now impugned of the Financial Commissioner is inconsistent with the order dismissing the review.

22. Not finding the said plea to have been urged by the petitioner before the Financial Commissioner on remand or even in the present petition, it was inquired from the senior counsel for the petitioner whether any such plea was taken. The senior counsel fairly concedes that no such plea was taken. The same cannot be allowed. Moreover, the earlier orders in the writ petitions were made and the parties have proceeded on the premise that the two proceedings were linked. There is thus no merit in the said plea also.

23. The counsel for the respondents 4 to 7 has also contended that the petitioner even otherwise has no defence to the suit for ejectment, having

not pleaded adverse possession. It is contended that mere possession for howsoever long would not enure any right in favour of the petitioner and the suit of the respondent for ejectment would still be within time. Reliance in this regard is placed on *Jagamohan Garnaik Vs. Sankar Samal* AIR 1990 Orissa 124.

24. However in view of the aforesaid, need is not felt to deal with the said contention. I may however note that the Apex Court in *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan* AIR 2009 SC 103 has held that the plea of adverse possession is a highly iniquitous plea and a person taking the said plea has no equity in his favour. Here admittedly the petitioner is not a *bhumidar* of the land, he has never bothered to have his name recorded in the revenue records as in cultivatory possession of the land and is seeking to rely upon technical plea of limitation to defend the suit for his ejectment by the *bhumidar* of the land. There is indeed no equity in favour of the petitioner.

25. The petition is dismissed. The matter having been considered at the stage of admission only, I refrain from imposing any costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

20th January, 2011
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