

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

Reserved on : April 10, 2012
Pronounced on: April 18, 2012

+ W.P.(C) 2048/2011

ZAHUR ALI AND ORS. Petitioners
Through: Mr.J.K.Jain, Advocate

versus

NASIBUDDIN AND ORS. Respondents
Through: Mr.Rajendra Dutt, Advocate for
respondent No. 1.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR
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ORDER
18.04.2012

1. This writ petition assails the grant of *bhumidari rights* to the respondents in respect of land situated in Khasra No.19/18/2 (10 biswas) and Khasra No.19/23 (1 bigha & 10 biswas) in Revenue Estate of Village Mandawali, Delhi (*hereinafter referred to as the subject land*).
2. In the second round of litigation, the first respondent was declared as bhumidar by the Revenue Assistant vide order of 3rd December, 1998 (Annexure P-3). In appeal by the petitioners herein, the aforesaid order (Annexure P-3) was set aside. The revision petition preferred by the first respondent herein, was allowed vide impugned order of 23rd February, 2011 (Annexure- P-17) by the Financial Commissioner, Delhi whereby order (Annexure P-3) of the Revenue Assistant, conferring bhumidari rights on the first respondent, was restored.
3. Noting the legal position governing grant of bhumidari rights, impugned order records that respondent- Nasibuddin had filed petition under Section 85 of the *Delhi land Reforms Act, 1954* on 24th October,

1986 to claim the bhumidari rights on the subject land while relying upon the revenue record i.e. khasra girdawaris of the years 1980-81, 1984-85, Form P-5 for Kharif 1986 and Rabi 1987. An application for leading evidence in respect of the khasra girdawaris of the years 2000-01 to 2004-05 and Form P-5 of Kharif 1998 was also filed by the first respondent- Nasibuddin to indicate his possession on the subject land.

4. Finding of fact recorded in the impugned order is that as per Khasra Girdawaris of the year 1980-81, 1984-85, 1986-87, the first respondent was in cultivating possession of the subject land and that it remains undisputed that the Sale Deed of the year 1972 executed by Late Shri Samsuddin, (*whose legal heirs are the petitioners*), was challenged in a civil suit by Late Samsuddin in the year 1975 in which restoration of the possession of the subject land was also sought by him and the said suit instituted by late Samsuddin stood dismissed vide order of 29th November, 1986 (Annexure R-1) by the Civil Court and that aforesaid order (Annexure R-1) has attained finality. In this context, in the impugned order, the Khasra Girdawaries in favour of Late Samsuddin, (which were subject matter of additional evidence) stands negated as by then, Samsuddin was no longer in this world.

5. The challenge in this petition to the impugned order (Annexure P-17) is on the ground that the additional evidence could not have been accepted without formal proof of the revenue record in respect of which additional evidence was led by the first respondent. It was urged by petitioners' counsel that the revenue record i.e. Khasra Girdawaries from the year 1981-82 till the year 1997-98 (Ex.RW-1/3 to Ex.RW-1/15) establish the possession of the predecessor of the petitioner upon the subject land and the documents relied upon by other respondents are not trustworthy and that Form P-5 as per explanation in Rule 63 of Delhi Land Revenue Rules, 1962, cannot be an evidence of possession.

According to learned counsel for the petitioners, the revenue record in favour of the petitioners cannot be discarded solely because there is no mutation of inheritance, as succession never remains in abeyance and mutation does not create any right or title. It is also urged by the petitioners' counsel that possession follows title and the onus is on the person who claims adverse possession and merely because the revenue record still continue in the name of the predecessor of the petitioners, it cannot be a justification to confer the *bhumidari rights* upon the first respondent. Therefore, it is urged by the petitioners' counsel that the impugned order (Annexure P-17) deserves to be set aside and the appellate order (Annexure P-5) ought to be restored.

6. Learned counsel for the petitioners had relied upon decisions in *Ram Saroop vs. Ram Nath & Anr.* 38 (1989) DLT 473 (DB); *Sri Bhimeshwara Swami Varu Temple vs. Pedapudi Krishna Murthi and Ors.*, (1973) 2 SCC 261 & *Savitri Devi and ors (Smt.) Vs. Smt. Gayatri Devi & Ors* 2010 I AD (Delhi) 709, in support of the afore-noted submissions.

7. Strong reliance was placed by learned counsel for the respondent No.1 on Civil Court's order (Annexure R-1) to support the impugned order (Annexure P-17) and reliance was also placed upon orders of Revenue Authorities (Annexure R-2 to Annexure R-7) filed alongwith the counter Affidavit by first respondent to indicate cultivatory possession of the first respondent upon the subject land. To controvert the stand of the petitioners' reliance was placed upon decisions reported in **Balbir Singh vs. A.D.M. (REVENUE) and Ors.**, 57 (1995) DLT 547 (DB); *Hawa Singh Khatri & Ors. Vs. Union of India & Ors*, 145(2007) DLT 514; *Bali Ram ;vs. Municipal Corporation of Delhi*, 159(2009) DLT 429; and *Ayodhya Devi vs. DDA & Anr.*, 156(2009) DLT 346.

8. Upon considering the rival submissions advanced, the decisions cited, I find that by way of additional evidence, certified copies of the revenue record for a period after filing of the application for grant of *bhumidari rights* have been placed on record, which carry a rebuttable presumption of correctness. So, petitioner's counsel cannot be heard to say that without formal proof of the revenue entries, additional evidence could not be taken on record. Infact, the additional evidence led reveals that the presumption of correctness of the revenue record stands belied in the instant matter as the revenue record (Annexure P-8 and Annexure P-9) is in the name of Samsuddin who had left this world in the year 1987 whereas, the aforesaid revenue record (Annexure P-8 and Annexure P-9) is of the year 1998-99 up to 2005-2006 showing the entries in the name of Samsuddin in respect of the subject land.

9. So far as reliance placed by the petitioner's counsel upon decision in *Ram Saroop* (supra) is concerned, the same is found to be misplaced, as the issue raised herein stands clinched by the Civil Court decision (Annexure R-1). The decision in *Savitri Devi* (supra) has no application to the instant case as the additional evidence sought to be led was not of certified copies of the revenue record. The legal position enunciated by the Apex Court in *Sri Bhimeshwara* (supra) regarding inadequacy of uncertain oral evidence, displacing the presumption arising out of several entries i.e., documentary evidence, has no application to the instant matter, as it is the Civil Court decision (Annexure R-1), which rebuts the presumption of correctness of the revenue entries relied upon by the petitioners.

10. The issue in the instant matter is not as to whether mutation creates any right or title or of adverse possession but is infact of petitioner's right to claim *bhumidari rights* in respect of the subject land on the basis of the revenue entries of the year 1981-82 upto 1985-86 (Annexure P-1). What evidentiary value can be attached to the aforesaid

revenue entries (Annexure P-1 *colly*) is the moot question.

11. In the face of the aforesaid Civil Court decision (Annexure R-1), petitioner cannot legitimately claim to be in possession of the subject land and so, the revenue entries (Annexure P-1-*colly*) for the period 1981-82 up to 1985-86 indicating the possession of the petitioner on the subject land are apparently incorrect and have been rightly discarded in the impugned order. In fact, Impugned order rightly relies upon the Civil Court decision (Annexure R-1) wherein petitioner's suit for declaration with consequential relief of possession in respect of the subject land was dismissed on 29th November, 1986.

12. In view of what is said above, I find no palpable error in the impugned order (Annexure P-17) requiring any interference by this Court while exercising writ jurisdiction. Consequentially, this petition is dismissed while leave the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

April 18, 2012.
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