

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

Date of decision: 27th July, 2012

+ **LPA No.328/2006**

% **OM PRAKASH** **....Appellant**
Through: Mr. U.K. Shandilya, Adv.

Versus

PRATAP SINGH & ORS. **..... Respondents**
Through: Mr. Sudhanshu Tomar, Adv. for R-1.
Mr. S.P. Sharma, Adv. for R-2.
Mr. H.S. Sachdeva, Adv. for
GNCTD.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the judgment dated 25.11.2005 of the learned Single Judge in W.P.(C) No.4730/1998 preferred by the respondent No.1 Partap Singh. The said writ petition was filed impugning the order dated 20.08.1996 of the Financial Commissioner in the First Appeal under Section 185(3) of the Delhi Land Reforms Act, 1954 preferred by the appellant herein against the order dated 11.12.1995 of the Additional Collector, Delhi on a petition under Section 185 r/w Section 75(2) of the Act filed by the respondent No.1 Partap Singh for setting aside of the order

dated 22.12.1986 of the Sub Divisional Magistrate (SDM) / Revenue Assistant declaring (under Section 74(4) of the Act) the appellant herein as bhumidhar of land ad-measuring 4 Bighas 16 Biswas in Khasra No.525 situated in the Revenue Estate of village Kadipur, Delhi. This appeal was admitted for hearing and it was directed that if the appellant is in possession of the land in dispute, he shall not be dispossessed therefrom. The counsels have been heard and the written arguments filed by them perused.

2. It is the case of the respondent No.1 that the said land was part of his holding and remained so even after the consolidation proceedings held in the village in the years 1951-52; however the status of the land, in the revenue records was recorded as 'banjar kadim'. It is further the case of the respondent No.1 that owing to the status of the land being recorded as 'banjar kadim', upon the Delhi Land Reforms Act coming into force in the year 1954 and which provided for vesting of all uncultivated waste land in the Gaon Sabha, the said land was treated as vested in the Gaon Sabha of village Kadipur (respondent No.2 in this appeal). The respondent No.1 further admits to have not challenged the said vesting order but claims that notwithstanding the same he continued to be in possession of the land and over the years re-claimed the land and started cultivating the same.

3. It is also not in dispute that the respondent No.2 Gaon Sabha in or about the year 1976 allotted the said land under Section 74 of the Act to the appellant herein.

4. The point of controversy is whether such allotment was only on paper, as contended by the respondent no.1 or the appellant, in pursuance to such allotment was also put into possession of the land, as contended by the appellant.

5. The respondent No.1, in or about the year 1976 i.e. just when the Gaon Sabha had allotted the said land to the appellant, instituted a suit in the Civil Court for declaration that the entries in the Khasra Girdawari of the said land in the name of the appellant and one Sh. Jai Singh were illegal and gave no power or authority to them to dispossess the respondent No.1 from the land without due process of law; injunction was also claimed against the appellant, the said Sh. Jai Singh and the Gaon Sabha from dispossessing the respondent No.1 from the said land. The case of the respondent No.1 in the plaint of the said suit was the same as recorded hereinabove. It was further the case of the respondent No.1 that since the Gaon Sabha had not filed any suit for his ejectment and the period of limitation therefor had lapsed, the respondent No.1 had become entitled to be declared a bhumidhar under

Section 85 of the Act, of the said land. The said suit was decided vide judgment dated 14.11.1980; though the respondent No.1 and not the appellant was held to be in cultivatory possession of the land but it was held that the Civil Court had no jurisdiction; it was also held that though the respondent No.1 was in possession but was not entitled to the discretionary relief of injunction against dispossession because he was neither the bhumidhar nor the asami of the land and his possession thereof was of a trespasser; the suit was accordingly dismissed.

6. The respondent No.1 preferred an appeal against the dismissal aforesaid of his suit and which appeal came to be decided by the learned Additional District Judge vide judgment dated 25.02.1983. The learned Additional District Judge noticed that in the Khasra Girdawari pertaining to Kharif 1975 and Rabi 1976, Gaon Sabha was shown as the bhumidhar of the land, though the name of the respondent No.1 was mentioned as in unauthorized possession. It was further noticed that in the Khasra Girdawari for the period of pendency of the suit, the name of the appellant herein and Sh. Jai Singh was mentioned. The learned Additional District Judge held that since the name of the appellant herein and Sh. Jai Singh did not find mention in the Khasra Girdawari of before 1976-77 when the suit was filed,

the respondent No.1 was not entitled to any relief against them. On the statement of the counsel for the Gaon Sabha that the respondent No.1 would not be dispossessed otherwise in due course of law, the respondent No.1 was granted a decree for injunction restraining the Gaon Sabha from dispossessing him from the said land otherwise than in due course of law. The said judgment had attained finality.

8. The appellant, claiming to have with his labour and money re-claimed the land, in the year 1982 sought declaration under Section 74(4) of the Act, as bhumidhar of the said land. Notice of the said application of the appellant was sent by the SDM / Revenue Assistant to the Gaon Sabha and upon the statement of the Pradhan of the Gaon Sabha that the appellant had been continuously cultivating the land and the Gaon Sabha had no objection to the appellant being declared as the bhumidhar thereof, the SDM / Revenue Assistant vide order dated 22.12.1986 supra, declared (under Section 74(4) of the Act) the appellant as the bhumidhar of the said land. No notice of this proceeding was sent to the respondent no.1, though he as aforesaid was claiming adversely to the appellant with respect to the said land.

9. The respondent No.1 in or about the year 1988 filed (in the Court of the Additional Collector) Objection Petition under Section 185 read with

Section 75(2) of the Act against the order dated 22.12.1986 (supra) of the SDM / Revenue Assistant declaring the appellant as the bhumidhar of the land. It was the case of the respondent No.1 that he came to know of the order dated 22.12.1986 only on 24.09.1987. The Additional Collector, vide order dated 11.12.1995 supra, finding that the respondent No.1 was not a party to the proceedings before the Revenue Assistant / SDM, treated the said proceeding as an appeal under Section 75(2) of the Act against the order aforesaid of the SDM / Revenue Assistant and condoned the delay in filing the appeal. Further finding that it was the plea of the Gaon Sabha before the Additional Collector that the land had never been allotted to the appellant and the possession thereof was with the Gaon Sabha, the Additional Collector held that Revenue Assistant / SDM had passed the order dated 22.12.1986 declaring the respondent No.1 as the bhumidhar in a mechanical manner on cyclostyled papers, without recording any evidence and accordingly set aside the order dated 22.12.1986 and remanded the matter to the Revenue Assistant / SDM for decision afresh after conferring opportunity to all concerned. The order also records that a proceeding under Section 86 of the Act was also pending; the Additional Collector thus directed the said proceeding also to be decided along with the remanded

matter.

10. Aggrieved from the setting aside by the Additional Collector of his status as bhumidhar, the appellant approached the Financial Commissioner as aforesaid. The order dated 20.08.1996 (supra) of the Financial Commissioner records that the counsel for the Gaon Sabha admitted that the land was allotted to the appellant and the appellant was vide order dated 22.12.1986 (supra), declared its bhumidhar. The Financial Commissioner however held that the Objection Petition (under Section 75(2) of the Act) preferred by the respondent No.1 before the Additional Collector could not have been entertained and the Additional Collector thus committed an illegality in treating the said Objection Petition as an appeal against the order dated 22.12.1986 of the SDM / Revenue Assistant. It was further held that an appeal could have been filed by a competent person only that too within the period of limitation; the respondent No.1 being not a party to the proceeding before the Revenue Assistant / SDM had no *locus standi* to file or maintain any petition or appeal against the said order. The plea of the respondent No.1, that being in possession, he had the right to file the appeal was negated. Accordingly the order of the Additional Collector was set aside.

11. Impugning the aforesaid order of the Financial Commissioner, the writ petition from which this appeal arises was filed.

12. The learned Single Judge though has held that a proceeding under Section 74(4) of the Act is between the person to whom the land is allotted as asami by the Gaon Sabha and who claims a right to be declared as bhumidar thereof and the Gaon Sabha only but has further held that the position would be different where another person claims to have been throughout in possession of the land. It was further held that since the order in a proceeding under Section 74(4) of the Act declaring appellant as the bhumidhar would necessarily prejudice the rights of the respondent No.1 who claims to be in cultivatory possession of the land; the respondent No.1 would become a necessary party to the said proceedings and would also have a right of appeal therein. Weightage was also given to the finding in the civil proceedings of the respondent No.1 being in possession of the land. Accordingly, the order of the Financial Commissioner was set aside and the matter remanded to the Revenue Assistant / SDM for decision afresh on the application of the appellant under Section 74(4) of the Act.

13. The thrust of the argument of the appellant as also in the memorandum of appeal and the synopsis of submissions, is on the reference

by the learned Single Judge in the judgment dated 25.11.2005 to the proceedings under Section 86 of the Act by the Gaon Sabha against the respondent No.1 and which the learned Single Judge has directed to be tagged to the remanded proceedings under Section 74(4) of the Act. It is the contention of the appellant that the said proceeding under Section 86 of the Act does not relate to the said land but is with respect to land village Ibrahimpur and the learned Single Judge has misconstrued documents on record and the said fact alone shows error in the judgment of the learned Single Judge.

14. We have intentionally not forayed into the matter concerning the said proceeding under Section 86 of the Act inasmuch as we are of the opinion that irrespective of the said proceeding, on the admitted facts as recorded above, the direction passed by the learned Single Judge in the writ petition is justified.

15. We are unable to agree with the reasoning given by the Financial Commissioner that the respondent No.1 was not a necessary party to the proceeding before the S.D.M./Revenue Assistant under Section 74(4) of the Act or had no locus to prefer appeal against order in the said proceeding. An order under Section 74(4) of the Act necessarily presumes not only

allotment of the land as asami but also reclamation thereof and which reclamation necessarily entails cultivation by possession over the land. If a third party claims to be in possession of the land since prior to the allotment thereof under Section 74(1) of the Act and further claims to have throughout continued in possession and the same is proved, it would necessarily mean that the asami / allottee has not reclaimed the land – if he has not reclaimed the land, the question of his being declared as bhumidhar does not arise.

16. We find the Additional Collector in the present case to have correctly applied the law in treating the objections filed by the respondent No.1 as an appeal against the order of the Revenue Assistant / SDM and in condoning the delay in filing the said appeal and in setting aside the order of the Revenue Assistant / SDM and in directing the Revenue Assistant to decide the application of the appellant under Section 74(4) of the Act afresh after hearing the respondent No.1 as well.

17. We are unable to agree also with the finding of the Financial Commissioner that the respondent no.1 had no locus to file or maintain appeal against the order of the SDM/Revenue Assistant declaring the appellant as bhumidhar of the land. Section 75(2) which provides for such appeal, is as under:

“(2) Deputy Commissioner may, on his own motion and shall on the application of any person aggrieved by an Order of the Gaon Sabha passed under sub-section (1), enquire in the prescribed manner and if he is satisfied that the Gaon Sabha has acted with substantial irregularity or otherwise than in accordance with the provisions of this Act, he may cancel such order.”

As the language aforesaid would show, the right to appeal has been conferred on “any person aggrieved....”. The respondent no.1, who, by filing the civil suit and appeal aforesaid, was claiming adversely to the respondent no.1 qua the said land and who had also obtained injunction against his dispossession (though against the Gaon Sabha only but in the presence of the appellant) was certainly ‘a person aggrieved’ and had locus to appeal. As far back as in *State of Punjab Vs. Amar Singh* (1974) 2 SCC 70 it was held that a person not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if either bound by the order or is aggrieved by it or is prejudicially affected by it. ‘A person aggrieved’, was in *Baldev Singh Vs. Surinder Mohan Sharma* (2003) 1 SCC 34 was defined as one whose right is affected by reason of the judgment and decree sought to be impugned. The Supreme Court in *Raj*

Kumar Vs. Sardari Lal (2004) 2 SCC 601 held that a person who is liable to be proceeded against in execution of the decree, can file an appeal against the decree and though not a party to the suit or decree, has *locus standi* to move an application for setting aside of the decree. The declaration by SDM/Revenue Assistant of appellant as bhumidhar, certainly affected the respondent no.1 who was/is setting up rights in himself qua the said land.

18. The counsel for the appellant has argued that the learned Single Judge erred in relying on the judgment in the appeal in the civil proceedings inasmuch as the said judgment is bad. It is argued that once the jurisdiction of the Civil Court was barred, no relief of injunction even could have been granted.

19. However what the aforesaid argument loses sight of is that the appellant was very much a party to the civil proceedings and had failed in proving that he and not the respondent No.1 was in possession. In fact, the Gaon Sabha also before the learned Additional District Judge had admitted the respondent No.1 to be in possession. The said admission of the Gaon Sabha in the presence of the appellant will bind not only the Gaon Sabha but also the appellant. If the appellant had any grievance against the said judgment in the civil proceedings, the appellant ought to have challenged

the same. However the appellant allowed the same to attain finality and cannot now in these proceedings be allowed to urge the same to be bad.

20. We therefore do not find any merit in this appeal and dismiss the same. The learned Single Judge had directed the Revenue Assistant / SDM to complete the remanded proceedings within one year. If no progress has been made in the remanded proceedings till now, even though there was no stay thereof, the same be now concluded forthwith and in any case within six months from today. We further clarify that if the proceedings under Section 86 of the Act are not with respect to the same land, the remanded proceedings under Section 74(4) of the Act be in any case concluded as directed. We further clarify that our observations herein including qua the decree of injunction in civil proceedings are only in the context of the right of the respondent no.1 to be heard in the proceeding under Section 74(4) and should not be construed as an expression of opinion on the merits of the claim/objections of the respondent no.1, which is to be gone into by the Revenue Assistant/SDM.

No costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 27th, 2012/‘gsr’