

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

+ CS(OS) 1253/2008

SHRI A.P.JAIN AND ORS. Plaintiffs
Through: Mr. S.C.Singhal, Advocate.
versus

UNION OF INDIA AND ORS. Defendants
Through: Defendants are *ex parte*.
% Date of Decision : March 14, 2012

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

J U D G M E N T

: REVA KHETRAPAL, J.

1. The above mentioned suit is filed by the legal representatives of late Shri Bishamber Dayal, late Shri Diwan Singh, late Shri Babu Lal Jain and late Shri Sohan Lal, who were real brothers, seeking a decree of permanent prohibitory injunction in their favour and against the defendants restraining them from causing obstruction in the use of land measuring 86 bighas and 16 biswas, bearing Khasra No.2492/1645 *gair mumkin pahar* in Tuglakabad, Delhi and/or dispossessing them forcibly, otherwise than by due process of law.

2. The facts are in a narrow compass. Late Shri Bishamber Dayal, late Shri Diwan Singh, late Shri Babu Lal and late Shri Sohan Lal died intestate, leaving behind the aforesaid land duly recorded in the *Jamabandi*. Since the aforesaid land was *gair mumkin pahar*, the plaintiffs, who are their legal representatives, claim that their family members have been using the said land for grazing cattle and for collecting fodder without any interruption till 15.05.2008, when they were obstructed by the officials of the defendants from using the aforesaid land on the ground that the land belonged to them after the coming into force of the Delhi Land Reforms Act, 1954 and the Rules framed thereunder.
3. The plaintiffs claim that thereupon they contacted the Revenue Officer of the area, who intimated that as per Section 7 of the Delhi Land Reforms Act, 1954, land which was waste land of common utility vests in the Gram Sabha for which compensation has been paid.
4. For better appreciation of the case, Section 7 of the Delhi Land Reforms Act, 1954 is reproduced as under:

“7. Rights of proprietors in waste lands, pasture lands or lands of common utility, etc., to vest in Gaon Sabha and compensation to be paid for them. - (1) All rights of an individual proprietor or proprietors pertaining to waste lands, grazing or collection of forest produce from forest or fish from fisheries lands of common utility, such as customary common pasture lands, cremation or burial grounds, abadi sites, pathways, public wells, tanks and water channels, or Khalihans , whether covered by an existing contract between such proprietor or proprietors and any other person or not, shall with effect from the commencement of this Act be terminated in accordance with the provision of sub-section (2) and the said contracts, if any, shall become void with effect from such commencement:

Provided that where such land was as a result of consolidation of holdings made available for use for any purpose other than those referred to in this sub-section, land kept aside in exchange thereof, as a result of such consolidation, shall for the purposes of this Act be deemed to be land originally meant for purposes referred to in this sub-section.

Explanation - For the purposes of this sub-section-

(i) "waste land" shall include cultivable and uncultivable waste area of the village including any land in the bed of a river occupied or held by an Asami referred to in section 6 (a) (iii) of the Act "except the uncultivated areas

(a) included in the holdings of such proprietor or proprietors or

(b) used for purposes other than those mentioned in clause (13) of section 3, at any time before the 28th day of October, 1956, or

(c) acquired by a bona fide purchaser for value at any time before the 28th day of October, 1956, for purpose other than those mentioned in clause (13) of section 3.

(ii) "lands of common utility" shall include such lands as are recorded as such at the last settlement or have been or would have been customarily recorded as such on 1st July, 1950.

(2) On the commencement of this Act, the Deputy Commissioner shall pass an order in respect of the proprietor or proprietors of each village either singly or collectively divesting the individual proprietor or proprietors of the rights mentioned in sub- section (1) and vesting those rights in the Gaon Sabha or in any person or authority appointed by the Chief Commissioner under section 161 with effect from the commencement of this Act and stating that a compensation equal in value to four times the amount of annual land revenue assessed at the last settlement for the cultivable and uncultivable waste area of the village shall be paid by the government to the proprietor or proprietors concerned.

If no such assessment of land revenue was made at the last settlement the rate of land revenue applied at the last settlement for similar areas in any other village in the same assessment circle shall be taken to be the rate of land revenue applicable to such areas or failing this the rate of land revenue applicable to such areas shall be computed at 75 per cent of the land revenue assessed on the lowest class of soil in the village.

(3) The amount of compensation shall be calculated separately for each village for the respective proprietor or proprietors in accordance with rules made under this Act and payments thereof shall be made in such number of annual installments, "not exceeding four, as the Chief Commissioner may determine, the first of which shall be paid

(a) in any case where such calculation has been made before the date on which the Delhi Land Reforms (Amendment) Act, 1959, receives the assent of the President, on the first day of fasli year next following such date; and

(b) in any other case, on the first day of the fasli year next following the date of such calculation.

(4) Where the amount of compensation is not paid by the due date specified in sub-section (3), such amount shall be paid with interest thereon at the rate of 21/2 percent per annum from the said date until payment.”

5. The plaintiffs allege that the aforesaid Section is not attracted in the instant case as the land in question was neither acquired by the defendants nor any compensation was ever paid either to the plaintiffs or their predecessors. According to the plaintiffs, perusal of the aforesaid Section would show that the land vests in the Gram Sabha on the commencement of the Act only on payment of compensation equal in value to four times the amount of annual land revenue assessed at the last settlement for the cultivable and uncultivable waste area of the village, which is to be paid to the proprietor or proprietors of each village for the purpose of divesting the individual proprietor or proprietors of the rights mentioned in Sub-Section (1) and vesting those rights in the Gram Sabha.

6. The plaintiffs' claim to a permanent prohibitory injunction against the defendants, restraining them from interfering in the use by the plaintiffs of the land in question, is thus predicated on the fact that the aforesaid land was at no point of time acquired by the Deputy Commissioner by passing an order in this respect nor any compensation was paid to the plaintiffs or their predecessors in the aforesaid land.
7. The short question which, therefore, arises for decision in the present suit is whether by virtue of provisions of Section 7 of the Delhi Land Reforms Act, 1954, the plaintiffs can be deprived of the use of the aforesaid 86 Bighas and 16 Biswas land comprising *gair mumkin pahar* in Tuglakabad, Delhi.
8. Summons of the suit were duly served upon the defendants, who did not care to appear and were accordingly proceeded *ex parte* in default of appearance on 15.09.2008.
9. The plaintiffs' witness - Shri S.P.Jain filed his affidavit in *ex parte* evidence, which is on the record and tendered the same in evidence as Exhibit PW1/A. In his said affidavit, he relied upon documents Exhibit PW1/1 and Exhibit PW1/2. It may be

noted that Exhibit PW1/1 is the family tree of the plaintiffs while Exhibit PW1/2 is the certified copy of the *Jamabandi* of the year 1948-49 showing that the predecessors in interest of the plaintiffs are the recorded owners of the property, measuring 86 bighas 16 biswas, bearing Khasra No.2492/1645 *gair mumkin pahar* in Tuglakabad, Delhi.

10.The aforesaid evidence placed on record by the plaintiffs is un rebutted and unchallenged on record. The necessary corollary is that it stands established on record that the plaintiffs are the recorded owners of the *gair mumkin pahar* comprised in Khasra No.2492/1645 in village Tuglakabad, Delhi and till date no order has been passed under Section 7 of the Delhi Land Reforms Act, 1954 divesting the plaintiffs of their rights or proprietorship in the aforesaid land and vesting them in the Gram Sabha. As stated above, by virtue of Sub-Section (2) of Section 7 of the said Act, it was incumbent upon the Deputy Commissioner to pass an order in respect of the proprietor or proprietors of each village either singly or collectively divesting the individual proprietor or proprietors of

the rights mentioned in Sub-Section (1) and vesting those rights in the Gram Sabha. The Gram Sabha has not appeared in this Court to state that such an order has been passed by the Deputy Commissioner nor there is anything on record to suggest that compensation in terms of the provisions of Sub-Section 2 of Section 7 has been paid by the Government to the plaintiffs or to their predecessors in interest. Thus indubitably, Sub-Section 2 of Section 7 of the Act cannot come in the way of grant of relief to the plaintiffs.

11. This court would be failing in its duty if it is not mentioned at this juncture that though the defendants chose to absent themselves from the proceedings, during the course of conduct of the present case, upon issuance of court notice for the appearance of Shri Sanjay Poddar, the learned Standing Counsel (Land & Building), Shri Poddar appeared before this court initially on May 16, 2011 and then on 13.07.2011, on which date he took objection to the maintainability of the suit based on Section 185 of the Delhi Land Reforms Act and cited two decisions, one of the Supreme Court and the other of this

court in support of his aforesaid objection viz., *Gaon Sabha versus Nathi* reported in *110 (2004) DLT 549 (SC)* and *Gaon Sabha versus Jage Ram* reported in *1973 RLR 597*.

12. The aforesaid two decisions, in my opinion, have no application to the facts of the present case as they deal with Sections 185 and 186 of the Delhi Land Reforms Act, which for the sake of ready reference are being reproduced hereunder:

“185. Cognizance of suits, etc., under this Act -

1) Except as provided by or under this Act no court other than a court mentioned in column 7 of Schedule I shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, take cognizance of any suit, application, or proceedings mentioned in column 3 thereof.

(2) Except as hereinafter provided no appeal shall lie from an order passed under any of the proceedings mentioned in column 3 of the Schedule aforesaid.

(3) An appeal shall lie from the final order passed by a court mentioned in column 3 to the court or authority mentioned in column 8 thereof.

(4) A second appeal shall lie from the final order passed in an appeal under sub section (3) to the authority, if any, mentioned against it in column 9 of the Schedule aforesaid.

186. Procedure when question of title is raised -

(1) Notwithstanding anything contained in section 185, if in any suit or proceeding in column 3 of Scheduled I, a question is raised regarding the title of any party to the land which is the subject matter of the suit or proceeding and such question is directly and substantially in issue the Court shall, unless the question has already been decided by a competent court, frame an issue on the question of the title and submit the record to the competent civil court for the decision of that issue only.

Explanation:- A plea regarding the title to the land which is clearly untenable and intended solely to oust the jurisdiction of the revenue court shall not be deemed to raise a question regarding the title to the land within the meaning of this section.

(2) The civil court, after reframing the issue, if necessary, shall decide such issue only and return the record together with its finding thereon to the revenue court which submitted it.

(3) The revenue court shall then proceed to decide the suit, accepting the finding of the civil court on the issue referred to it.

(4) An appeal from a decree of a revenue court in a suit or proceeding in which an issue regarding title has been decided by a civil court under sub-section (2) shall lie to the civil court which having regard to the valuation of the suit has jurisdiction to hear appeal from the Court to which the issue of title has been referred.”

13. A bare glance at Section 185 shows that by virtue of the said Section, notwithstanding anything contained in the Code of Civil Procedure 1908, no court other than a court mentioned in Column 7 of Schedule - I shall take cognizance of any suit, application, or proceedings mentioned in Column 3 thereof. Adverting to Column 3 of Schedule I, which relates to description of suit, application and other proceedings and reading the same with Column 2, which is captioned ‘**Section of Act**’, I find no mention of any embargo to the institution of the present suit.

14. A close reading of judgments rendered by the Supreme Court and the Division Bench of this Court in the cases of *Nathi (supra)* and *Jage Ram (supra)* respectively, shows that all that is laid down in the said decisions is that the Land Reforms Act is a complete Code in itself and if a question of title to a property governed by the Act arises, a civil court has no jurisdiction to try a suit in respect thereof even if the land is uncultivated land viz. (a) *Banjar Jadid*, land which has remained unsown for four successive harvests, (b) *Banjar*

Qadim, land which has remained unsown for eight successive harvests, and (c) *Gair Mumkin*, land which has for any reason become uncultivable, such as land under roads, buildings, streams, canals, tanks, or the like, or land which is barren, sand or ravines.

15.It was further held that in view of the Scheme of the Act, the right to institute a suit would vest only to a *Bhumidar* or to the Gram Sabha. Thus, if the Gram Sabha wants any clarification in respect of any person claiming to be entitled to any right in any land, it can institute a suit for declaration under Item 28 of Schedule I of the Act and the Revenue Assistant can make declaration of the right of such person.

16.It need hardly be emphasized that the present suit is neither a suit for declaration of title nor a suit for possession. The plaintiffs' claim is premised on the fact that the plaintiffs are in settled possession of the aforesaid land for the last several decades. It is also trite that settled possession gives rise to possession such that even the rightful owner may only recover it by taking recourse to law.

17. This court finds support in coming to the aforesaid conclusion by a three-Judge Bench decision of the Supreme Court in ***Rame Gowda (Dead) by LRs versus M. Varadappa Naidu (Dead) by LRs., (2004) 1 SCC 769***, wherein it has been laid down that settled possession or effective possession of a person without title would entitle him to protect his possession even as against the true owner. It was significantly observed as follows:

“8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the

possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

*9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to **Munshi Ram v. Delhi Admn., Puran Singh v.State of Punjab and Ram Rattan v. State of U.P.** The authorities need not be multiplied. In **Munshi Ram case**, it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is, entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use*

*more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In **Puran Singh case**, the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The “settled possession” must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase “settled possession” does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of “settled possession”:*

i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession.”

18. It bears mentioning that in the ***Rame Gowda (supra)*** case, the finding of the trial court was that the plaintiff had failed to prove his title. The trial court nevertheless determined the suit on the basis of possession, protecting the established possession of the plaintiff and restraining the attempted interference therewith and left the question of title open. It held that unless dispossessed therefrom by due process of law, the plaintiff was entitled to protection of his possession. On this finding, the trial court issued an injunction in favour of the plaintiff/respondent. The defendant's appeal was dismissed by the High Court. He then appealed to the Supreme Court. The Supreme Court relying upon a catena of decisions on the subject upheld the decision of the trial court and of the High Court maintaining the plaintiffs' claim for injunction in view of the fact that the plaintiffs had been in possession and there was

nothing to show that the plaintiffs had gained possession by unfair means just prior to the suit. It, however, left the question of title to the suit property open to be contended for or against by any of the contending parties.

19.On the basis of the aforesaid law laid down by the Hon'ble Supreme Court, I have no hesitation in holding that the plaintiffs have established on record that they are in possession of the suit property, which possession has devolved upon them through their predecessors-in-title, who were recorded owners of the land in question. There is no rebuttal to this by any of the defendants. The plaintiffs must accordingly be held entitled to the decree prayed for by them against their possible dispossession otherwise than by due process of law.

20.A decree of permanent prohibitory injunction is accordingly passed in favour of the plaintiffs and against the defendants, their officials, servants and agents restraining them from causing any obstruction in the use of the land in the possession of the plaintiffs measuring 86 bighas and 16 biswas, bearing Khasra No.2492/1645 *gair mumkin pahar* in Tuglakabad, Delhi

or dispossessing them forcibly otherwise than by due process of law. It is, however, clarified that the question of title to the suit property is being left open to be determined in appropriate proceedings before the Revenue Controlling Authority at the instance of the Gram Sabha or the plaintiffs, as may be advised.

21.CS(OS) No.1253/2008 and IA Nos.7702/2008, 7703/2008 stand disposed of accordingly.

22.There will be no order as to costs.

**REVA KHETRAPAL
(JUDGE)**

March 14, 2012
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