

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

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Date of decision: 22nd November, 2012

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LPA No.591/2008

NARAIN SINGH & ANR.

..... Petitioners

Through: Mr. Anand Yadav, Adv.

Versus

FINANCIAL COMMISSIONER & ORS.

..... Respondents

Through: Mr. N.S. Dalal & Mr. Devesh Pratap
Singh, Advs. for R-2&3.

Mr. S.P. Sharma & Mr. Jitender
Chaudhary, Advs. for R1&4.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the judgment dated 14.07.2008 of a learned Single Judge of this Court dismissing the W.P.(C) No.670/1995 preferred by the appellants. The said writ petition was preferred impugning the order dated 10.02.1995 of the Financial Commissioner, Delhi in a proceeding preferred by the respondents No.2 and 3 i.e. Sh. Mohinder Singh and Sh. Rajinder Singh and setting aside orders of mutation (in favour of appellants) of land bearing Khasra No.6/19/2 admeasuring 4 Bighas 18 Biswas situated in the Revenue Estate of village Samai Pur, Delhi and

further ordering the land to be vested in the respondent No.4 Gaon Sabha village Samai Pur Badli.

2. The facts, insofar as necessary for disposal of this appeal, may be set out in seriatim as under:

- (i) One Sh. Maman Singh was the bhumidhar of the aforesaid land and who vide Sale Deeds both dated 04.05.1989 sold 2 Bighas 18 Biswas of the aforesaid land to the appellant No.1 Sh. Narain Singh and the remaining 2 Bighas to the appellant No.2 Sh. Som Dutt and mutation of transfers were sanctioned by the Tehsildar in their favour on 31.05.1989.
- (ii) The respondents No.2&3 in or about November, 1989 filed a petition under Section 85 of the Delhi Land Reforms Act, 1954 (Reforms Act) seeking declaration of bhumidhari rights in the said land on the basis of their adverse possession over the said land. The said petition however was dismissed by the Revenue Assistant and after a chequered history, the second appeal arising from the said proceeding was dismissed by the Financial

Commissioner on 10.02.1995 and which order is stated to have attained finality.

- (iii) The respondents No.2&3, besides the proceedings aforesaid under Section 85 of the Reforms Act had also filed appeal under provisions of the Delhi Land Revenue Act, 1954 (hereafter called the Revenue Act) to the Additional Collector (Sh. M.P. Tyagi) Magistrate against the order of mutation of the said land in favour of the appellants. The said appeal was dismissed on 09.08.1991 and again after a long history, the matter was decided by the order dated 10.02.1995 supra by the Financial Commissioner. The Financial Commissioner *inter alia* held that the transfer of land by Sh. Maman Singh in favour of the appellants was in contravention of Section 33 of the Reforms Act and thus the consequences as per Section 42 of the Reforms Act i.e. of vesting of land in the Gaon Sabha had to follow. Accordingly, the mutation order in favour of the appellants was set aside and the land ordered to be vested in the Gaon Sabha; and,

(iv) The appellants also filed a suit for permanent injunction to restrain the respondents No.2 and 3 from disposing the appellants from the said land. Though initially ad-interim injunction was granted in the said suit but subsequently the application of the appellants for interim relief dismissed. Appeal preferred by the appellants against the order of dismissal of their injunction application was also dismissed by this Court. The appellants then preferred a Special Leave Petition to the Supreme Court and in which the Supreme Court directed the SHO of the Police Station concerned to be incharge of the land and subsequently the respondents No.2 and 3 were to put into possession of the land, as an interim arrangement, without affecting the merits of the case in any manner whatsoever.

3. The counsel for the appellants has raised three contentions before us. Firstly, it is contended that the subject land is situated in the extended abadi of the village and is not part of agricultural holding and thus not governed by Section 33 of the Reforms Act and thus the transfer of the

said land by Sh. Maman Singh in favour of the appellants could not have been held to be violative of Section 33 of the Reforms Act. Reliance in this regard is placed on ***Raj Kishore Tyagi Vs. Radhey Shyam*** 149 (2008) DLT 754. Secondly, it is contended that the village in which the land is situated was urbanized in the year 1982 and for this reason also, the Reforms Act ceased to apply to the said land. It is contended that though the learned Single Judge in the impugned judgment has held that the Reforms Act would continue to apply notwithstanding the urbanization of the land but a Division Bench of this Court subsequently in ***Smt. Indu Khorana Vs. Gram Sabha*** MANU/DE/0969/2010 has held that once a rural area is urbanized by issuance of Notification under Section 507(a) of the Delhi Municipal Corporation Act, 1957, provisions of the Reforms Act will cease to apply. It is argued that if the Reforms Act did not apply to the land at the time of sale by Sh. Maman Singh in the year 1989, the finding of the Financial Commissioner upheld by the learned Single Judge, of the sale in favour of the appellants being bad for the reason of being violative of the provisions of the Reforms Act, has to be necessarily set aside. Thirdly and lastly, it is contended that the challenge to the mutation of the subject land in favour of the appellants

was under the provisions of the Revenue Act and the Financial Commissioner in the said proceedings under the Revenue Act could not have vested the land in the Gaon Sabha, exercising the powers under Sections 33 and 42 of the Reforms Act.

4. We have enquired from the counsel for the appellant that if his second contention aforesaid, of the land, as far back as in the year 1982 i.e. since prior to the sale in favour of the appellants and commencement of the proceedings aforesaid by the respondents No.2 and 3, having ceased to be governed by the Reforms Act, will not, both the proceedings aforesaid i.e. under Section 85 of the Reforms Act and of mutation, be *non est* since their very inception in as much as, the proceedings before the Revenue Authorities are maintainable only so long as the land is governed by the Reforms Act. It was further enquired whether not in the aforesaid scenario the disputes between the parties relating to title and possession of the land, will have to be determined by the Civil Court.

5. The counsel for the appellants agrees.

6. The counsel for the respondents No.2 and 3 though also could not controvert that as per the judgment of the Division bench in ***Smt. Indu Khorana*** supra, upon a Notification for urbanization of the land having been issued in the year 1982, the land would cease to be governed by the Reforms Act and the proceedings aforesaid before the Revenue Authorities would be *non est*, has contended that the judgment of the Division bench in ***Smt. Indu Khorana*** is *per incuriam*. Reliance in this regard is placed on ***Om Prakash Agarwal Vs. Batara Behera*** AIR 1999 SC 1093 where it was held that the Orissa Land Reforms Act, 1960 being aimed at agrarian reforms and being applicable to land being used or capable of being used for agricultural purposes and not excluding land merely because they were situated in an urban conglomerate, would apply to land used or capable of being used for agricultural purpose, irrespective of whether it is situated within a municipal area or in villages. It is further stated that challenge to ***Smt. Indu Khorana*** is pending before the Supreme Court.

7. It is not the case of the counsel for the respondents No.2 and 3 that operation of the judgment of the Division Bench in ***Smt. Indu Khorana***

has been stayed by the Supreme Court. Merely because a challenge thereto is pending before the Supreme Court is no reason for this Bench to not follow the earlier Division Bench judgment. We are also not able to concur with the argument of the counsel for the respondents No.2 and 3 of the judgment of the Division Bench being contrary to the prior judgment aforesaid of the Supreme Court though admittedly the said judgment of the Supreme Court was not cited before or noticed by the Division Bench. The reason which prevailed with the Supreme Court in *Om Prakash Agarwal* supra was that there was no iota of material on record in that case that the area in question has been reserved for urbanization by Notification in the Official Gazette. On the contrary, the Notification in the present case under Section 507(a) of the Delhi Municipal Corporation (DMC) Act, 1957 expressly urbanizes the land and brings the same within the ambit of the DMC Act. The DMC Act nowhere deals with agricultural lands. Moreover, the very purport of a Notification under Section 507(a) of the DMC Act is to convert the land from agricultural to urban. We are thus not persuaded to refer the matter to a larger Bench for reconsideration of the judgment in *Smt. Indu Khorana*.

8. The counsel for the respondents No.2 and 3 has then invited our attention to the orders of the Supreme Court in the proceedings aforesaid where on the statement of the parties that proceedings under the Reforms Act were pending, the Supreme Court had directed the Revenue Assistant to conclude the proceedings and decide the matter on the basis of evidence led therein and had directed delivery of possession to the respondents No.2 and 3 subject to the finding in the said proceedings. The counsel for the respondents No.2 and 3 contends that as per the order of the Supreme Court, the proceedings before the Revenue Authorities are maintainable. We are again unable to agree. The Supreme Court made those observations on the statement of the parties, of the disputes between the parties pending before the Revenue Court. The matter had reached the Supreme Court from an application for interim relief in the suit for injunction filed by the appellants. The said suit is stated to be still pending. The orders of the Supreme Court remained interim orders during the pendency of the suit. Since the suit was only for injunction and the title disputes between the parties as to the land was stated to be pending before the Revenue Court, the Supreme Court made the said interim orders subject to the findings to be returned in the revenue proceedings.

The Supreme Court on its own did not return any findings as to the maintainability of the proceedings before the Revenue Court / Authorities. However now when the said proceedings are found to be not maintainable, they cannot be said to be made maintainable by the order aforesaid of the Supreme Court.

9. We therefore dispose of this appeal in aforesaid terms, observing that the proceedings leading to the filing of this appeal were *non est* and leaving the parties to agitate their claims / disputes before appropriate fora and clarify that all pleas in law shall remain available to the parties before the appropriate fora.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

NOVEMBER 22, 2012

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