

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

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Date of decision: 16th October, 2012

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LPA No.702/2012

BHIM SINGH

..... Appellant

Through: Mr. N.S. Dalal with Mr. Devesh
Pratap Singh, Aditya Bhadoo & Mr.
S. Mishra, Adv.

Versus

GAON SABHA, KANJHAWALA

..... Respondent

Through: Mr. V.K. Tandon, Adv.

AND

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LPA No.703/2012

BHIM SINGH

..... Appellant

Through: Mr. N.S. Dalal with Mr. Devesh
Pratap Singh, Aditya Bhadoo & Mr.
S. Mishra, Adv.

Versus

FINANCIAL COMMISSIONER & ANR.

..... Respondents

Through: Mr. V.K. Tandon, Adv.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. These intra-court appeals impugn the common order dated 09.02.2012 of the learned Single Judge dismissing W.P.(C) Nos.6876/2007 and No.2148/2011 preferred by the appellant. Though the appeals are delayed by 195 days and accompanied with an application for condonation of delay and further though we do not find any sufficient cause to have been made out for condonation of delay but to satisfy our judicial conscience, we have heard the counsel for the appellant at length on merits as well.

2. The appellant claims to have, in or about the year 1995, filed a petition under Section 85 of the Delhi Land Reforms Act, 1954 (DLR Act) seeking a declaration of his having become *bhumidhar* of land ad-measuring 5 Bighas and 15 Biswas in Khasra No.33/18 in the Revenue Estate of village Kanjhawala, Delhi occupied by him without title and no suit for his eviction therefrom having been filed within the prescribed period of limitation.

3. It appears that consolidation proceedings under the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 (Consolidation Act) were commenced in the village in the year 1996. The

appellant, who claims to have raised construction of boundary wall and a room on the said land, further claims to have applied to the Consolidation Officer for recording the land as '*Kayami*' in his favour.

4. The petition aforesaid preferred by the appellant under Section 85 of the DLR Act was rejected / dismissed by the Revenue Assistant vide order dated 01.11.1999 on the basis of report of the Tehsildar that the said land was under the Gaon Sabha and had on 29.03.1996 been leased out for 99 years to Revenue Department for development of Growth Centre; yet another reason given was that the appellant could not furnish any details of his continuous agricultural use of the land.

5. The appellant preferred an appeal against the order aforesaid of the Revenue Assistant to the Collector. The claim of the appellant before the Collector was that he had been using the land aforesaid for tethering cattle and storing deadwood and cow dung and had also constructed two pukka rooms over the land for storing cattle fodder. It was the plea of the Gaon Sabha before the Collector that the appellant was not in possession of the land; that the land was '*Banjar Kadim*' and was being used for grazing of

cattle by the villagers. The Collector , vide order dated 29.06.2006 dismissed the appeal holding that the appellant had not furnished any documentary proof which could establish his possession on the land and further that the land had been leased out to the Revenue Department for development of Growth Centre and the appellant had no title over the land.

6. The application made by the appellant to the Consolidation Officer for recording the land as '*Kayami*' in his favour was also rejected on 12.06.2006 on the ground that the appellant had already been allotted plot in the extended *Lal Dora* and Section 21(2) of the Consolidation Act was over and after Section 21(2) of the Consolidation Act, nobody could be declared *bhumidhar*.

7. That the appellant preferred a Second Appeal to the Financial Commissioner against the order aforesaid of the Collector and a petition under Section 42 of the Consolidation Act also before the Financial Commissioner against the order of the Consolidation Officer.

8. The Financial Commissioner vide order dated 24.07.2007 dismissed the Revision Petition under Section 42 of the Consolidation Act on the

ground that the appellant had not been able to substantiate his claim for *bhumidhari* rights under Section 85 of the DLR Act and was not in physical possession of the land and had already been granted residential plot of the maximum size according to the Consolidation Scheme and was not entitled to any additional land against Khasra No.33/18 which was on lease with the Revenue Department of the Government.

9. Against the aforesaid order of the Financial Commissioner, W.P.(C) No.6876/2007 supra was preferred.

10. The Financial Commissioner vide order dated 09.11.2010 also dismissed the Second Appeal preferred by the appellant holding that no case for interference with the concurrent findings of fact of the Revenue Assistant and the Collector was made out. Another reason given for dismissal of the Second Appeal was that the land in question was not an agricultural land and had, during the consolidation proceedings in the year 1996-97, come within the extended *Lal Dora* and thus the question of the appellant being in cultivatory possession thereof which is the *sine qua non* for being declared a

bhumidhar, did not arise. Against this order of the Financial Commissioner, W.P.(C) No.2148/2011 *supra* was preferred.

11. It appears that the appellant before the learned Single Judge relied upon an order dated 07.05.1994 of the Metropolitan Magistrate, Delhi of acquittal of the appellant of the charge under Section 251 Cr.P.C. On the basis thereof, it was contended that it was clear evidence of the appellant being in possession of the land, else he would not have been charged with trespass over the land. Reliance was also placed on the report dated 06.01.1999 of the *Patwari* submitted in the proceedings under Section 85 of the DLR Act aforesaid to the effect that though the land was in the ownership of Gaon Sabha and on lease to the Economic Development Centre but a boundary wall and '*Kotha*' existed thereon and the same was being used as '*Gitwar*' and was in possession of the appellant.

12. The learned Single Judge has however held that the order of the Criminal Court cannot possibly be the basis to claim the *bhumidhari* rights as the acquittal of the appellant was on the ground of the prosecution having failed to prove the ownership of the land in question. Qua the report of the

Patwari, it was observed that the same also disclosed the land to be in ownership of Gaon Sabha and on lease with the Economic Development Centre and the report of the appellant being in possession of a '*Kotha*' and '*Gitwar*' on portion of the land was on the basis of hearsay. It was held that such hearsay could not be believed when pitted against the Revenue Record of ownership of the Gaon Sabha and possession of the Revenue Department for Economic Development Centre. It was yet further held that no case for interfering with the concurrent findings of fact of the Revenue Assistant, Collector and Financial Commissioner declining bhumidari rights to the appellant was made out. On the claim of the appellant for recording of the said land as '*Kayami*' in his favour, it was held that once the appellant had failed to establish any rights on the land, the question of his acquiring any rights on the basis of '*Kayami*' did not arise.

13. The counsel for the appellant has raised the same arguments as before the learned Single Judge, before us also. On enquiry as to why, if the appellant was in possession of the land, his possession was not recorded in the revenue records, the counsel contends that the Rules under the DLR Act regarding recording of possession were changed / amended in the year 1989

and which change / amendment was finally quashed by the Division Bench of this Court in ***Balbir Singh Vs. A.D.M. (Revenue)*** 57 (1995) DLT 547. It is contended that since the Revenue Authorities till 1995 were not recording actual possession, the appellant could not get his possession recorded.

14. Adjudication under Section 85 of the DLR Act is factual in nature. Declaration of *bhumidhari* rights under Section 85 of the DLR Act is akin to acquisition of title by adverse possession. The Supreme Court in ***Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan*** (2009) 16 SCC 517 has held the law of adverse possession to be irrational, illogical and wholly disproportionate and extremely harsh to the true owner in granting windfall for dishonest persons. Suggestion was given to the Government to reconsider the said law. Similar sentiments were also expressed in ***State of Haryana Vs. Mukesh Kumar*** (2011) 10 SCC 404. However, inspite of the suggestion of the Supreme Court, the law has not been reconsidered and we are bound to consider the case of the appellant within the parameters of Section 85 of the DLR Act. However, while doing so, it cannot be lost sight of that the jurisdiction invoked by the appellant of this Court is under Article 226 of the Constitution of India which is a discretionary jurisdiction and

when the claim of the appellant of acquisition of title to land is pitted against the interest of the public at large in construction of Growth Centre for which the said land was leased out by the Gaon Sabha as owner to the Revenue Department of the Government, the equities cannot be said to be in favour of the appellant.

15. When we see the matter in aforesaid light, we fail to fathom any reason to differ from the reasoning given by the learned Single Judge, of the concurrent findings of fact of three Courts under the Revenue Laws being non-inteferable in exercise of powers of judicial review. We may notice that no ground of perversity in arriving at the findings of fact is made out. Even if the argument raised before us, of it being not possible for the appellant to have his possession of the land recorded owing to the amendment in the Delhi Land Revenue Rules, 1962 were to be correct, though not found to have been raised before any of the foras or before the learned Single Judge, once the appellant was attempting to perfect his title after trespassing over the land and his possession was not being recorded, the least that was expected of the appellant was to protest against such non

recording of his possession in the revenue records. Nothing of the sort is even pleaded or urged.

16. The Revenue Authorities have returned not only concurrent findings of the appellant being not in cultivatory possession of the land but also of the land being uncultivable and being recorded as '*Banjar Kadim*'. It is not the plea of the appellant also of having cultivated the land. In the absence of the said plea, no claim for declaration of *bhumidari* rights was in any case made out. It is the settled position in law that possession of open land is deemed to be of owner / title holder thereof and title under Section 85 of the DLR Act can be acquired only by showing possession of the land by cultivation. We therefore do not find any error in the denial of the claim of the appellant to *bhumidhari* rights. There is absolutely nothing to show the continuous possession of the appellant. According to the appellant also, he was merely grazing his cattle on the land; according to the respondents so were the other villagers.

17. The counsel for the appellant has sought to argue that notwithstanding his failure to have himself declared as *bhumidhar*, he would still be entitled

to the land as '*Kayami*'. We find the argument, to say the least, preposterous. Once *bhumidhari* rights are denied for the reason of the appellant having failed to establish his possession, the question of the structure on the land being in possession of the appellant does not arise.

18. We therefore do not find any case on merits also and dismiss the appeals.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

OCTOBER 16, 2012
'gsr'..