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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 29th October, 2014

+ **W.P.(C) 3316/2010 & CrI. M.A. 469/2011 and CM. No. 2393/2011**

SUKHBIR SINGH KEMWAL Petitioner

Represented by: Petitioner in person.

Versus

GNCT OF DELHI AND ORS Respondents

Represented by: Mr. Sudhir Nandrajog, Senior Advocate with Mr. Parvinder Chauhan, Mr. Nishant Prateek and Mr. Shrey Chathly, Advocates for Respondent Nos. 3 and 4.

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J.

W.P.(C) 3316/2010

1. Vide the present writ petition, the petitioner is seeking directions to set aside the impugned order dated 15.12.2009 passed by the Financial Commissioner whereby order dated 10.04.2008 passed by the Deputy

Commissioner was set aside and the appeal of the respondent Nos.3 & 4 was allowed.

2. Brief facts of the case are that Shri Anant Ram was declared Bhumidhar of Khasra No.41/12(2.08), situated within the revenue estate of Village Nangli Poona, Delhi, under Section 74 (4) of the Delhi Land Reforms Act, 1954 (hereinafter to be referred as 'the Act'). On 29.08.1989, Ram Lal Aggarwal father of Anil Kumar Aggarwal/respondent No.3 purchased 1 Bigha 6 Biswas out of 2 Bighas 13 Biswas from the Khasra mentioned above through GPA on 29.08.1989 for Rs.45,000/- in total. The father of the petitioner had claimed cultivatory possession upon land bearing Khasra No.41/12 (1 Bigha 4 Biswas) in the revenue estate of Village Nangli Poona, Delhi, as that land exists adjoining to the petitioner's father's land bearing Khasra No.41/13 (4-6) allotted under 20-Point Programme by the Government. Ram Lal Aggarwal then sold said land to his son Anil Kumar/respondent No.3 on 28.05.1990 for a sum of Rs.1,24,900/-. However, name of Shri Anant Ram continued to figure in the Khasra Girdawaries till 1996. Thus, neither the name of Shri Ram Lal Aggarwal nor his son Anil Kumar Aggarwal ever figured in the Khasra Girdawaries of the suit land till 1996.

3. The petitioner lodged a police complaint on 26.12.2001 with SHO, PS Samaypur Badli, Delhi, for protecting his agricultural land in Khasra Nos. 41/12 and 41/13 at Village Nangli Poona, Delhi, from Ravinder

Singh/respondent No.4 and his brothers etc. who were trying to snatch the said land by unlawful manners.

4. After death of the father of the petitioner on 22.09.2002, the petitioner has become Asami/Bhumidhar of the land bearing Khasra No.41/12 (1 Bigha 4 Biswas) as per Section 67(d) of the Act. Late Shiv Charan, father of the petitioner had adverse cultivatory possession of the suit land till his death in September, 2002, but unfortunately the area Patwari did not record him as Bhumidhar either in Khasra Girdawari or in 'Form P-5'. Accordingly, the petitioner moved an application dated 20.12.2004 before area Tehsildar for recording his name in Khasra Girdawari and Form P-5 for the Rabi and Kharif 2004. The petitioner moved another application dated 12.01.2005 for recording his name in Khasra Girdawari for the Rabi crop 2005.

5. Thereafter, petitioner filed a suit under Section 85 of the Act on 13.01.2005 in the Court of SDM, Narela, seeking declaration of Bhumidhari rights in his favour. Since said SDM did not decide the suit, hence, the petitioner filed Writ Petition No.7435/2005 before this Court in January/February, 2005 for directions to record his cultivatory possession upon Khasra No.41/12 (1 Bigha 4 Biswas). Accordingly, this Court passed the following directions/clarifications on 07.11.2005 in CM No. 13784/2005 in WP(C) No.7435/2005:-

“(i). The existing para 2 of the order dated 25.10.2005 be read as under:-

“Grievance of the petitioner is that notwithstanding the fear that he is in cultivatory possession of lands comprising of

Khasra No.41/12 min. (1 - 4), Village Nangli Poona while preparing the Khasra Girdawaries, said fact is not being recorded.

(ii) Existing para (3) of the order dated 25.10.2005 be read as under:-

“Petitioner does not dispute that the ownership of the land is being recorded as that of respondent no.1. Petitioner requires the cultivatory possession to be recorded under Column 21 of the Khasra Girdawari.”

6. It is pertinent to mention here that respondent No.3 Anil Aggarwal sold the aforesaid land to Ravinder Singh/respondent No.4 after 15 years of purchase, i.e., on 24.03.2005 for an amount of Rs.1,50,000/-.

7. Thereafter, the Tehsildar, Narela, vide its order dated 22.06.2006 rejected the application of the petitioner by recording that onus of proving cultivatory possession over the said land was upon the applicant. However, he failed to do so.

8. Being aggrieved, the petitioner challenged the same before the Deputy Commissioner, vide Appeal Nos.78/2006 and 79/2007/DC(North West) under Section 64 of the Act, which was allowed in favour of the petitioner vide its order dated 10.04.2008, consequently, setting aside the order dated 22.06.2006 passed by the Tehsildar, Narela.

9. Being aggrieved, the respondent No.3 appealed against the order dated 10.04.2008 passed by the Deputy Commissioner before the Financial Commissioner. Vide order dated 15.12.2009, the Financial Commissioner allowed the appeal of the respondent No.3 by recording that the dispute

involved in order dated 22.06.2006 was with respect to the factum of possession for the year 2004 (Rabi and Kharif) and 2005 (Rabi), whereas the order dated 13.08.2007 relates to the year 2006 (Kharif). As per Rule 301 of the Delhi Land Revenue Rules, the Rabi Crop portal tour commences on 1st February and ends on 15th March, whereas Kharif Crop portal tour commences on 1st September and ends on 31st October. Even if the averments made in the writ petition are taken to be binding admission of Ravinder Aggarwal (petitioner no.2 therein), in such an eventuality, there is nothing on record supporting the possession of Sukhbir Singh Kemwal (respondent No.1 therein) for the period prior to 06.04.2005. So far as the order dated 13.08.2007 is concerned, the same has been passed on the basis of site visit. Accordingly, the Financial Commissioner opined that the Deputy Commissioner erred in solely relying upon the writ petition for setting aside the orders which were under challenge before him.

10. Being aggrieved, the petitioner has filed the present petition.

11. Shri Sukhbir Singh Kemwal, petitioner in person submitted that Ravinder Singh/respondent No.4 had filed a Criminal Petition bearing No.1667/2005 under Article 226 of the Constitution of India read with Section 482 of the Code of Civil Procedure, 1908, before this Court, for issuance of directions thereby directing the petitioner (respondent No.5 therein) to restore the possession of respondent No.4 on the land in question and sought quashing of FIR No.254/2005 registered under Sections 427/447/506/34 of the Indian Penal Code, 1860, at Police Station Samaypur

Badli and subsequent proceedings thereto. However, the same was dismissed vide order dated 29.09.2005.

12. The petitioner has drawn the attention of this Court to prayer (b) of the aforementioned writ petition, whereby Ravinder Singh/respondent No.4 sought relief as under:-

“b. The respondent No.5 to restore the possession of land in question to the petitioner, which was illegally taken by respondent No.1, Sukhbir Singh Kemwal (petitioner herein) in collusion with respondent Nos. 2 and 5, i.e., SHO, P.S. Samaypur Badli and Hari Ram ASI, Investigating Officer of FIR No.254/2005, P.S. Samaypur Badli respectively.”

13. Thus, it shows that till September, 2005, when respondent No.4 filed the aforesaid writ petition, the petitioner was in possession of the land in question.

14. Moreover, Ravinder Singh/respondent No.4 filed another petition bearing No.2657/2006, whereby also sought directions against the Commissioner of Police (respondent No.5 therein) to restore the possession upon the land in question and also sought quashing of the FIR mentioned above, however, vide order dated 17.08.2007, the same was dismissed for non-prosecution. The said petition had never been got restored and hence the order of dismissal has attained finality.

15. The petitioner submitted that concerned Tehsildar was respondent No.4 in both the abovementioned petitions. The first Tehsildar, namely, Lalit Mohan passed the order dated 22.06.2006 and second Tehsildar, namely,

Sheo Shankar Singh passed the order dated 13.08.2007 against the petitioner.

16. On 06.01.2006, Shri Ravinder Singh/respondent No.4 filed the objections against the illegal entry of the name of the petitioner in Form P-5 for land measuring about 1300 square yards out of Khasra No.41/12/2, measuring about 2 Bighas 13 Biswas, situated at Revenue Estate of Village Nangli Poona, whereby prayed as under:-

“That in view of the above mentioned facts and circumstances, the Petitioner is not entitled to get his name entered in the Form P-5 rather it is the objector who is legally entitled to get his name entered in the Form P-5 as the objector has been dispossessed illegally and unauthorizedly by the Petitioner in collusion with the police official.”

17. The petitioner further submitted that vide order dated 04.05.2005, Tehsildar, Narela, directed the Halka Patwari to visit the site and file the report by 13.05.2005. Accordingly, Shri Rajinder Singh, Kanungo, submitted its report dated 28.05.2005 as under:-

“Inspected the spot of Khasra No.41/12 of Village Nangli Poona as per the application received. The crop of ‘jwar’ was found cultivated in the said Khasra. The owner of the Tube Well used to irrigate the crop, told on enquiry that ‘jwar’ crop had been cultivated by Sukhbir Singh Kemwal. Khasra No.41/12-19 (min.) was also found added to this field. The crop of ‘jwar’ has been cultivated on the land in question. The report is accordingly submitted.”

18. The petitioner submitted that since 24.03.2005, not a single entry was made in the revenue records either in favour of Shri Ravinder Singh/respondent No.4 or Shri Ram Lal Aggarwal. To this effect, the

petitioner has drawn attention of this Court to Annexure P-23 (colly.), wherein in Column No. 4 of Khasra Girdawari of 2005-06 of Village Nangli Poona, name of tenor of the Khatauni as Anil Kumar Aggarwal is mentioned, however, in note recorded as under:-

“Daily diary No.748 dated 16.04.2008, vide Case Nos.78 and 79/DC/N.W./06-07 under Section 64 DLR Act. 1954 dated 10.04.2008, the learned Dy. Commissioner (Revenue District, North/West), Delhi, decided that cultivatory possession in Khasra Girdawari for the crop of ‘Kharif’ 2005 in respect of Khasra No.41/12 (1.4) be recorded in the name of Sukhbir Singh Kemwal (petitioner herein).

Orders jointly passed by the DC N/W SDM and Tehsildar (Narela). Hence, accordingly, the cultivatory possession has been recorded.”

19. In Khasra Girdawari 2006-07 against Column No.4, name of Anil Kumar Aggarwal is shown and in Note 1 recorded as under:-

“Daily diary No.748 dated 16.04.2008, vide Case No.78 and 79/DC/N.W./06-07 under Sections 64 DLR Act. 1954 dated 10.04.2008, the learned Dy. Commissioner (Revenue District, North/West), Delhi, decided that cultivatory possession in Khasra Girdawari for the crop of ‘Kharif’ 2006 in respect of Khasra No.41/12 (1.4) be recorded in the name of Sukhbir Singh Kemwal (petitioner herein).

Orders jointly passed by the DC N/W SDM and Tehsildar (Narela). Hence, accordingly, the cultivatory possession has been recorded.”

20. And in Note 2 recorded as under:-

“Vide order of Tehsildar (Narela) Shri Virender Kumar, case

No.1-Tect. Dated 07.11.2009 (report No. 145 dated 09.11.2009), the cultivatory possession of Sukhbir Singh Kemwal over Khasra No.41/12 (1.4) for 'Rabi' crop is accepted/recorded."

The same situation remained in 2007-08 and 2009-10, as has been shown in the relevant Khasra Girdawaris.

21. The petitioner has drawn attention of this Court to Form P-5, See Rule (66), showing list of changes dated 15.10.2009, wherein in column No.8, i.e., name of the person (s) found in actual possession other than recorded in column Nos. 4 and 5 as under:-

*"Sukhbir Singh Kemwal S/o Shri Shiv Charan "**Sha Deh**"*

On the bottom of this document, recorded as under:-

"Sir,

A Khasra No.41/12 min.(1-4) Village Nangli Poona, Shri Sukhbir Singh Kemwal cultivated the crop of 'Dhancha' and on the spot he is in cultivatory possession. Hence, both the parties be informed.

Sd/- Patwari/15.10.2009"

22. In the aforesaid list dated 15.10.2009, against column No.2, entry in column No.4 of Khasra, name mentioned as 'Anil Kumar Aggarwal S/o Ramlal Aggarwal'. However, in the list of changes dated 16.10.2009, column No.2 mentions name of 'Bhoop Singh Brahm Prakash S/o Anant Ram', "**Sha Deh**". Entry in column No.8 remained the same in the name of the petitioner. In this report, it is recorded that:-

“Khasra No.41/19 min.(0-15) Village Nangli Poona, Shri Sukhbir Singh Kemwal cultivated the crop of ‘Dhancha’ and on the spot he is in cultivatory possession. Hence, both the parties be informed.

Sd/- Patwari/15.10.2009”

23. The petitioner submitted that as per Section 67 (d) of the Act, when a person has been deprived of possession, his right to recover is barred by limitation. As per Section 85 of the Act, if a Suit is not filed under Section 84 of the Act or a Decree obtained in any such Suit is not executed within a period of limitation provided for filing of the Suit or execution of Decree, the person taking or retaining possession shall (i) where the land forms part of the holding of a Bhumidhar, become a Bhumidhar thereof; (ii) where the land forms part of the holding of a Asami on behalf of the Gaon Sabha, become an Asami; (iii) in any case to which the provisions of Clause B of Section 84 apply, become a Bhumidhar or Asami if he had been admitted to the possession of the land by Gaon Sabha. The petitioner submitted that liberty was granted to all the parties; however the respondents did not take any steps within a period of 3 years. Thus, the respondent Nos. 3 and 4 have lost their rights to put any claim on the land in question.

24. Petitioner further submitted that he moved an application under Section 151 of the CPC before this Court seeking directions by directing respondent No. 1, GNCT of Delhi, that the complete trial court record be searched out and placed on record. It is averred in said application that after

hearing the petitioner, this Court had directed vide its orders dated 04.03.2011 and 01.11.2011 that the records of the proceedings before the Financial Commissioner and the Tehsildar be requisitioned. Further, vide order dated 04.01.2012, this Court directed that the record of Case No. 17/TN/CO/2007 decided on 13.08.2007 by the Consolidation Officer, Narela, and record of Financial Commissioner in Case No. 139-140/2007, titled as '*Anil Aggarwal and Ors. Vs. Sukhbir Singh Kemwal and Ors.*' be requisitioned before the next date of hearing.

25. It is further averred that the petitioner has been alarmed and dismayed to find that certain crucial papers/documents evidencing the cultivatory possession of the petitioner of the suit land have been either kept back or not sent or have gone missing from the records maintained by the Office of Tehsildar/Consolidation Officer, Narela. Accordingly, the petitioner / applicant has reasons to believe that the said documents have been deliberately kept back or misplaced to deprive the petitioner / applicant from justice. The person or persons responsible for it be identified and punished to prevent recurrence of such event.

26. The papers/documents missing from the record file sent by Tehsildar/Consolidation Officer from the records of Case No. 17/TN/CO/2007 are as follows:

- (i) The entire petition dated 25.03.2007 filed by the petitioner / applicant before the Tehsildar / Consolidation Officer, Narela containing 129 pages.

- (ii) Photostat true copy of the Crl. W.P. No. 2657/2006 filed by respondent No. 4, Sh. Ravinder Singh, before this Court wherein he had specifically admitted the possession of the petitioner over the suit land and prayed to the Court for restoration of his possession over it.

27. Tehsildar/Consolidation Officer, Narela, was impleaded as respondent No. 4 in the said Writ Petition and same was dismissed by this Court on 17.08.2007. Interestingly, the Tehsildar/Consolidation Officer dismissed the petition of the petitioner on 13.08.2007.

28. The petitioner further submitted that Sh. Anant Ram, original allottee of the land had moved an application on 22.01.1982 before SDM (QUC and DG)/RA/Delhi for being declared Bhumidhar in respect of Khasra No. 41/12 (4-16) on the plea that (i) the quality of the land in dispute is other than the land falling in any of the classes mentioned in sub-clause (A) of Section 16 of the Act, i.e., Banjar Qadim before the allotment (ii) the land in dispute was allotted to the applicant for reclamation for more than 5 years back and the applicant has claimed it and he is in continuous cultivatory possession of land ever since then. The said authority vide its order dated 19.04.1983 opined as under:-

“I hereby ordered declaring Bhumidhar to applicant mentioned above. Since same type of evidence has been produced in all cases, I further direct that copy of this order be placed on each case file Serial No. 126.

29. The petitioner has further submitted that vide circular dated 03.10.1996 issued from the Office of Additional District Magistrate (Revenue), and the Deputy Commissioner's Office, that the transfer of land where Bhumidhari rights have been conferred under Section 74(4) of the Act to the genuine allottee of Panchayat land under 20-Point Programme; land notified under Section 4 of the Act; the land forming part of joint Khata; the petitioner has waited for the proceedings under Section 81 of the Act which are pending for vested land in Gaon Sabha for non-agriculture use, the transfer of any of the land would be violation of Section 33 of the DLR Act.

30. Moreover, in the case of ***Pawan Kumar and Ganga Bishan Gupta Vs. Financial Commissioner and Ors. 107 (2203), Delhi Law Times 726***, it is held that where land is allotted under 20-Point Programme for their economic upliftment, sale of such land would not be permissible as it would defeat very purpose of allotment of land to such landless labourers. The successors-in-interest have no *locus standi* to challenge this restriction imposed by the Assistant Revenue.

31. Moreover, in order dated 17.06.1998, Development Commissioner (Panchayat Unit), Govt. of NCT of Delhi issued order as under:

(1) As per the decision of Hon'ble Supreme Court in case titled as ***Murlidhar Dayandeo Kesekar Vs. Vishwanath Pandu Barde and Anr., JT 1995(3) SC563***, the assigned land cannot be permitted to be sold or converted to non-agricultural use.

(2) As per provision of Rule-170(1) and 2(2) of the Delhi Panchayat Raj (Amendment) Rules, 1976, Gaon Sabha land was leased out to the lapse of 20-Point Programme for house, sites and agricultural use @ 0.5 P. Per Sq. Yd. and therefore it is categorised as: “assigned land”.

(3) Therefore, in the light of the Hon’ble Supreme Court Judgment, it is intimated that Gaon Sabha land for house, sites and agricultural purpose under 20-Point Programme is not permitted to be sold or converted to non-agricultural use. Thus, orders should be followed meticulously and scrupulously and any lapse in this regard will be viewed seriously.

32. The petitioner further submitted that vide statement dated 07.06.2005 (Annexure P-22) made before Inspector (Vigilance), Delhi Police, Ram Kumar Aggarwal had stated that he purchased the agricultural land of 1300 square yards in Khasra No.41/12/2 of Village Nangli Poona on 29.08.1989 from Shri Anant Ram for an amount of Rs.45,000/-. He transferred this land in the name of his middle son Anil Kumar Aggarwal/Respondent No.3 on 28.05.1990. He had facing problems in walking for the last three-four years and his son Anil Kumar was busy in looking after him, due to which, he and his son Anil Kumar could not look after their agricultural land being located at far away distance from their residence. They also could not find out as to what was happening at their said land. Anil Kumar was not aware of location of this land. His son had a busy schedule in business, domestic affairs and his treatment, therefore, was not getting time to look after this land. So his

son sold the land measuring 1200 square yards from Khasra No.41/12/2 of Village Nangli Poona to Shri Ravinder Singh/respondent No.4 for an amount of Rs.1,50,000/-. Further stated that in January/February, 2005, they received a notice from an Advocate Shri Khatri, Tis Hazari Courts, Delhi, pertaining to this land, whereby informed that noticee (Sukhbir Singh Kemwal) had been looking after and cultivating this land for the last fifteen years. So he wanted to get transfer this land into his own name legally in the manner as laid down in law. Again stated, his son Anil Kumar Aggarwal was not aware of the location of this land.

33. In addition, vide irrevocable General Power of Attorney dated 24.03.2005, Shri Anil Kumar Aggarwal appointed Shri Ravinder Singh as nominee to manage, control and supervise his/their agricultural land measuring 1200 square yards (1 Bigha 4 Biswas), bearing Khasra No. 41/12/2 situated in the area of Village Nangli Poona, Delhi. Shri Ramlal Aggarwal purchased the land on 29.08.1989. This Khasra was not known and was not in existence. Moreover, in pursuance of notice under Section 91 Cr.P.C., concerned Tehsildar, submitted its written report to SHO, Police Station Swaroop Nagar, by stating that the cultivator of the land bearing Khasra No.41/19 was Shri Ravinder Singh s/o Shri Kartar Singh and the crops of 'jwar' and 'wheat' were harvested thereon.

34. On the aforesaid report, the petitioner made a complaint to the police, which was culminated into FIR No.16/07 dated 21.09.2007, Police Station Swaroop Nagar, Delhi. Accordingly, after investigation police filed the

chargesheet dated 16.04.2008 wherein stated as under:-

“1. Shri Lalit Mohan (Ex Tehsildar, Narela), he was directed by SDM, Narela on 04.06.2005 to take action as per law on the spot inspection report of Kanungo to benefit the accused persons. He also ignored Aksh Sizra Khasra No.41/12 issued by Patwari on 16.08.2005 and 04.02.2006. Both confirmed one piece of land Khasra No.41/12 (2.13) and one cultivator thereof. He never conducted spot inspection and no enquiry was conducted by him before given his judgment in May, 2006. Shri Lalit Mohan was one of the respondents in Delhi High Court Writ Petition Nos. 1667/2005 and 2657/2006 filed by accused Ravinder Singh, wherein the accused was praying from restoration of possession from the complainant.

2. Shri Shiv Shankar Singh (Ex Tehsildar, Narela) deliberately ignored his crop of 'jwar' on the spot in all the Khasra Nos. 41/12, 41/13 and 41/19. There was no dividing land demarcating the above mentioned khasra numbers. Photographs confirmed these facts. He deliberately ignored the statement of all the witnesses on case file, who were even not cross-examined by the Advocate of accused persons during the hearing of the Bhumidari case (Form P-5). He also tempered this case file to benefit the accused persons. He ignored the statements of Shri Ravinder Singh in which he admitted the cultivatory possession of the complainant in both the writ petitions filed by him in Delhi High Court.

3. Shri Ashok Kumar Verma, present Tehsildar Narela, he deliberately ignored the existing persons admission of his cultivatory possession in Writ Petition Nos.1667/2005 and 2657/2006. He also ignored his application for Form P-5 given to him on 01.09.2007 and he deliberately submitted a false report to SHO Police Station Swaroop Nagar on 03.10.2007 to help the accused persons.

4. *Shri Praveen Bhardwaj, Ex Halka Patwari of Village Nangli Poona deliberately, in collusion with the Tehsildar/accused persons gave a false report to the police. He destroyed all P-5 Forms of the complainant for the period Kharif 2005 to Kharif 2007.*

5. *Shri Vijay Dogra, (Ex SDM, Narela), deliberately violated Section 4 of Scheduled Caste and Scheduled Tribe (Preventive of Atrocities Act), 1989, and helped the accused persons. He ignored the applications of the complainant given to him for recording the entry of his name in revenue record despite High Court orders, which were given to him. The copies of Writ Petition Nos. 1667/2005 and 2657/2006 were also given to him but he ignored the same.*

6. *Shri Manjeet Singh Rana (Ex Tehsildar, Narela) was well aware that the complainant belongs to Scheduled Caste. He deliberately helped the accused persons and failed to take action on application given to him on 19.12.2006. He also ignored his Form P-5 which were filed by Patwari Praveen Bhardwaj regarding cultivatory possession of the complainant, on the land in question as it was confirmed by his Reader Siyal that Form P-5 were filed in the name of the complainant. But Manjeet Singh did not take any action on them and helped the accused.*

35. The petitioner submitted that the aforesaid chargesheet had been rejected on technical grounds by the Trial Court, therefore, the petitioner has challenged the same before this Court, which is pending for adjudication.

36. The petitioner submitted that as per Section 102 of the Indian Evidence Act, 1872, burden of proof in a suit or proceeding lies on that person who would fail if no evidence was led on either side. In the present case, the respondent Nos. 3 and 4 have not produced any evidence at all in support of

their case, hence, at this stage they have no right to put forth any claim over the land.

37. The petitioner submitted that Tehsildar, Village Nangli Poona, Delhi, rejected his applications dated 20.12.2004 and 12.01.2005. Being aggrieved, he filed an appeal bearing No.78/DC/N2/2006 before the Deputy Commissioner, New Delhi. Another application dated 13.08.2007 moved by the petitioner for entering his name in Khasra for Kharif 2006 was also rejected by the Tehsildar vide its order dated 13.08.2007. Hence, an appeal bearing No.79/DC/NW/2007 was filed by the petitioner against the aforementioned order dated 13.08.2007. The said appeal was allowed by the Deputy Commissioner (North-West), Delhi, vide its order dated 10.04.2008. Despite, the respondent No.4/ Ravinder Singh and his associates stolen the crop of 'jwar' standing upon the suit land in Khasra No.41/12 (1-4), therefore, provisions of Sections 3(1)(iv), (v) and 3 (2)(vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, were invoked against Ravinder Singh and his associates, which is pending trial.

38. The respondent No.4/Shri Ravinder Singh filed two revision petitions bearing Nos. 139/08-CA and 140/08-CA before the Financial Commissioner after expiry of 70 days against the order dated 10.04.2008 passed by the Deputy Commissioner (North-West), Delhi. Both these revision petitions were filed in violation of Section 67 (2) of the Act. The respondent No.4/Shri Ravinder Singh neither moved any application for condonation of

delay along with appeals nor mentioned anything about the delay. Hence, condonation of delay was not an issue before the Financial Commissioner.

39. It is submitted by the petitioner that the respondent No.1/Financial Commissioner passed the impugned order dated 15.12.2009 at the admission stage of the revision petitions without going through the petitioner's written arguments vide his application dated 20.07.2005 under Section 67(2) of the Act and without hearing the grievances of the petitioner and written statements on the aforementioned two revision petitions, which is in violation of Articles 14, 16 and 21 of the Constitution of India and the principles of natural justice as well.

40. On the other hand, Mr. Sudhir Nandrajog, learned Senior Counsel appearing on behalf of respondent Nos. 3 and 4 submitted that the power of this Court while exercising supervisory jurisdiction is different and narrower than the power of the Court of Appeal. The supervisory power of this Court can be exercised only when there is an error of jurisdiction or there is an apparent error of law, however, both the grounds lack in present petition. Even, the petitioner has not disputed the jurisdiction of the Financial Commissioner.

41. Vide the present petition; petitioner seeks re-appreciation of facts and material before the Appellate Authority and exercise of discretion by the Financial Commissioner. However, same is not permissible in exercise of supervisory jurisdiction of this Court.

42. Mr. Nandrajog submitted that vide order dated 18.01.2008 passed by the Financial Commissioner in Case No. 356/07-CA, the proceedings before the Court of Deputy Commissioner were stayed. During the course of hearing, the petitioner moved an application for filing of additional documents, the same was allowed even without providing copy of the same to the respondents or calling for any opposition to the same.

43. Being aggrieved, the respondent Nos. 3 and 4 moved an application on 13.03.2008 for review of the aforesaid order dated 29.02.2008. However, the said application was rejected at the threshold without even calling for reply of the same from the petitioner. The petitioner had indulged in forging documents and filing the same as a piece of evidence to gain advantage of the same. Once such instance was recorded vide order dated 22.07.2006 passed by Consolidation Officer, Narela, whereby taken note of admission of the petitioner himself regarding fabrication of documents and filing the same as evidence in support of his case.

44. Mr. Nandrajog further submitted that the root cause of the miseries of answering respondents is related to the piece of land approximately measuring 1 Bigha and 4 Biswas (1200 Sq. Yds.) falling in Khasra No. 41/12 min. situated in the Revenue Estate of Village Nangli Poona, Delhi. The land measuring about 2 Bighas 13 Biswas out of Khasra No. 41/12/2 situated at the above noted village was initially owned by one Sh. Anant Ram. He executed Registered General Power of Attorney dated 29.08.1989 in relation to area approximately measuring about 1300 Sq. Yds. (1 Bigha 6 Biswas) in

favour of Sh. Ram Lal Aggarwal. He also executed another Registered General Power of Attorney dated 19.08.1988 in relation to area measuring 1 Bigha 7 Biswas (1300 Sq. Yds.) of land in favour of Sh. Vinod Kumar Jain, who being the lawful attorney of Sh. Anant Ram executed a Sale Deed dated 02.09.1988 in favour of Sh. Sushil Kumar Jain in relation to agricultural land measuring 1 Bigha 7 Biswas (1350 Sq. Yds.) falling in Khasra No. 41/12/2 situated at the aforementioned village. The said Sushil Kumar Jain did not get his name mutated in the Land Revenue Record, as such, even today as per the Land Revenue Record, Sh. Anant Ram is being shown as the owner of this land whereas the fact remains that said land already stands sold to Sh. Sushil Kumar Jain by way of Registered Sale Deed.

45. Sh. Ram Lal Aggarwal being lawful attorney of Sh. Anant Ram also executed a Sale Deed dated 20.05.1990 in favour of respondent No. 3 for land measuring 1300 Sq. Yds. falling in Khasra No. 41/12/2 situated in Village Nangli Poona, after accepting valid consideration of Rs.1,24,900/-. The physical possession of the land was also handed over to respondent No. 3. Accordingly, mutation was recorded in favour of respondent No. 3 in Revenue Records.

46. Mr. Nandrajog further submitted that a Notification under Section 14 of East Punjab (Consolidation and Prevention of Fragmentation) Holdings Act, 1948, was issued in relation to the lands situated in the Revenue Estate of Village Nangli Poona, Delhi. Pursuant to said Notification all the lands of Village Nangli Poona including the aforesaid lands were repartitioned and re-

numbered. Even, during the course of repartition, Muzorai (compulsory surrender of land for common purpose) to the extent of 1 Biswa each was deducted from the aforesaid land. In this manner, the balance land which remained with Sh. Sushil Kumar Jain was 1 Bigha and 6 Biswas (1300 Sq. Yds.) approximately and the land which remained with respondent No. 3 was 1 Bigha and 4 Biswas (1200 Sq. Yds.) approximately.

47. It is pertinent to mention here that the repartition under Section 21 of the Consolidation Act was carried out from 31.03.2000 to 10.04.2000. During the course of repartition, the land which stood sold to Sh. Sushil Kumar Jain, was given Khasra No. 41/19, whereas the land which was sold to respondent No. 3 was renumbered as Khasra No. 41/12/2.

48. Since the very beginning, respondent No. 3 had given the said land, measuring 1300 Sq. Yds. out of Khasra No.41/12/2 to respondent No. 4 for the proper care and utilization. Accordingly, respondent No. 4 had been managing and cultivating the said land to the satisfaction of respondent No. 3. The settlement amongst respondent Nos. 3 and 4 was that in consideration of cultivating and managing the land, respondent No. 4 used to give the agricultural produce of the said land.

49. Since respondent No. 3 was finding it difficult to maintain the said land, respondent No. 4 purchased the land by way of registered General Power of Attorney and other related documents dated 24.03.2005. However, since the cultivatory possession of the said land was with respondent No. 4 and continued to remain with him, therefore, respondent No. 4 became the

owner of the land w.e.f. 24.03.2005. The petitioner owns a land in Khasra No.41/19 adjoining the said land.

50. The total land falling in Khasra No. 41/12 measures 2 Bighas 9 Biswas as stated above. Out of the said land, respondent No. 4 owns 1 Bigha and 5 Biswas of land. Learned Senior Counsel submitted that the said land is a piece of agricultural land and is governed by provisions of Delhi Land Reforms Act, 1954. Schedule 1, Entry 19 of the said Act has provided a limitation of three years for seeking possession of the piece of land occupied by a person who is not the owner thereof. A suit for ejectment of such an unauthorized occupation is required to be brought within a period of three years from such unauthorized occupation. Section 85 of the Act has prescribed that such an unauthorized occupation against whom no suit for ejectment is brought within a period of three years is entitled to be declared as Bhumidhar of such unauthorizedly occupied portion of land.

51. Under the Scheme of Delhi Land Reforms Act, a Bhumidar is equivalent to owner of a land. Bhumidhari rights are transferable as well as inheritable. The Authorities under the Act are to decide a dispute with regard to entries in Annual Register as provided by Section 27 of the Revenue Act. Under the Scheme of Revenue Act, in the records of rights, name of such person is to be mentioned who, is / are in cultivatory possession of the land within a Revenue Estate in respect of the ownership of the land in question. Under Rule 63 of Delhi Land Revenue Rules, 1962, name of such person, who is in cultivatory possession of the piece of land not belonging to such

persons to be recorded in Form-5 if the land is private land and in Form-5A, if the land belongs to Gaon Sabha. An entry of cultivatory possession in Form P-5 or Form P-5A shown is used as a piece of evidence to prove unauthorized possession over the land to claim Bhumidhari rights under Section 85 of the Delhi Land Reforms Act. In view of above, it is obvious that an entry of cultivatory possession in Form P-5 has a potential of causing serious damage to the rights of recorded owner / Bhumidhar.

52. Learned Senior Counsel further submitted that father of the petitioner, during his lifetime had filed a Civil Writ Petition before this Court vide W.P.(C) 1641/2002 titled as '**Shiv Charan Vs. Bhoop Sing and Ors.**', thereby seeking cultivatory possession of the land falling in Khasra No. 41/19. During the pendency of the said Writ Petition, Shri Shiv Charan, father of the petitioner died, accordingly, the petitioner was substituted as a petitioner in place of his father. The said petition was disposed of vide judgment dated 19.01.2004 as under:-

"I also find that no application has been moved under the provisions of Delhi Land Reforms Act, 1954 for insertion of such a name and the petitioner ought to have first exhausted the remedy, but instead has filed the present petition under Article 226 of the Constitution of India.

The counter-affidavit of respondent No.3 in any case states that the necessary entries shall be made in pursuance to the enquiry conducted. The Tehsildar is directed to take necessary action within a maximum period of two months from today."

53. Mr.Sudhir Nandrajog, Senior Counsel further submitted that neither the petitioner nor his father during his lifetime ever claimed the cultivatory possession of the said land falling in Khasra No. 41/12 min. As per the claim of the petitioner, he had filed two applications dated 20.12.2004 and 12.01.2005, both bearing the same date of acknowledgement, i.e., 12.01.2005, thereby seeking to record his cultivatory possession of the said land falling in Khasra No. 41/12. Even vide application dated 20.12.2004, the petitioner had claimed recording of his cultivatory possession for the period 2003-2004 whereas vide the application dated 12.01.2005, he had sought recording of his cultivatory possession for Rabi 2005. Therefore, even the petitioner did not claim possession prior to 2003-2004. Moreover, as per the own case of the petitioner, he filed a case under Section 85 of the Land Revenue Act, 1954, on 31.01.2005, thereby seeking himself to be declared as Bhumidhar of the land in question. Therefore, the larger game plan of the petitioner was apparent from the moment he allegedly moved an application. Thereafter, on or after 15.02.2005, petitioner filed a Civil Writ Petition being No. W.P.(C) 7435/2005 thereby seeking a direction to Tehsildar, Narela, to record his cultivatory possession in relation to the said land. The said Writ Petition was disposed of by this Court vide order dated 25.10.2005 and modified vide order dated 07.11.2005. Accordingly, as per the directions, a full fledged inquiry was proceeded where the witnesses were examined by the petitioner. Thereafter, vide a detailed and reasoned order dated 22.06.2006, Shri Lalit Mohan, the then Tehsildar, rejected the claim of the petitioner. The said order clearly reveals that the petitioner, in support of

his claim, not only produced false witnesses but also went to the extent of fabricating documents and tendered them as evidence in proceedings. Moreover, the petitioner again moved applications for recording of his cultivatory possession in relation to the said land. Again, vide order dated 13.08.2007 passed by the Tehsildar/Consolidation Officer (Narela) the claim of the petitioner was rejected.

54. Learned Senior Counsel further submitted that the present petition is in regard to the Khasra No.41/12. Father of the petitioner claimed Bhumidhari rights in Khasra No.41/19 only. He never sought Bhumidhari rights on the basis of the cultivated possession in Khasra No.41/12.

55. In order dated 22.06.2006, Tehsildar (Narela) disposed of applications dated 20.12.2004 and 12.01.2005 filed by the petitioner for recording of his cultivated possession over the land falling in Khasra No.41/12 min (1-04). It is recorded in the said order that as per Revenue record, Shri Anil Kumar Aggarwal/respondent no.3 is the recorded owner of the said land. It is further recorded that the applicant (petitioner herein) was claiming his cultivatory possession in a land which belongs to somebody else and hence the matter was disputed one, therefore, governed by the provisions of Section 27(2) of the Delhi Land Revenue Act, 1954, which prescribes that all other disputes regarding entries in the annual registers shall be decided by the Tehsildar on the basis of the possession. In explanation of the aforesaid Section, the term 'possession' means possession based on admission, succession, transfer or lease referred to in Section 22. It is further recorded that the applicant,

admittedly, was claiming his possession to be unauthorised and without the consent of the recorded owner. He has also not set up his case on the basis of succession, transfer or lease. Therefore, prima facie case of the petitioner was not saved by any of the parameters laid down by the said Act to decide the fact of the possession. For proving his case, the petitioner had examined six witnesses including himself. The petitioner admitted that he was not able to come to village daily where the land was lying as he was in Government service at Delhi. Further, admitted that during 2003 to 2006 because of paucity of time, he was not able to cultivate the land. In his affidavit, he did not mention that his lands were being tilled by Shri Ravinder Kumar @ Fauji and rather has filed receipt towards payment of charges for tilling issued by one Shivaji R/o Khera Kalan. Further, said Ravinder Kumar @ Fauji in his affidavit stated that he used to till the land of the petitioner by his tractor. Whereas, in his cross-examination he admitted that he did not own any tractor.

56. Learned senior counsel submitted that if said Ravinder Singh was getting his land tilled from somebody else, as he was not owning any tractor, then, how could he till land for the petitioner.

57. The petitioner claimed that prior to him, the said land was in cultivatory possession of his father since 1990 and his father during his lifetime had filed cases in relation to Khasra No.41/19 only. However, during cross-examination, the petitioner admitted that his father did not file any case in relation to the said land. The Tehsildar recorded in his order that

what prevented the father of the petitioner from filing a case in relation to land in Khasra No.41/12.

58. Mr.Nandrajog, learned Senior Counsel further submitted that another witness, namely, Rajpal R/o Budhnagar, Inderpuri, New Delhi, had appeared to depose in favour of the petitioner. He made several statements which on the face of the record were false. When confronted with the record, this witness realized that his falsehood has been exposed and at that stage he made a prayer to withdraw his statement/affidavit and the same may not be read in evidence. Yet, another witness who does not live in the village, namely, Shri Ram Rattan R/o Masjid Lane, Bhogal, Delhi appeared to depose in favour of the petitioner. In his cross-examination, he admitted that he was not aware of the khasra numbers of the land of the petitioner. The witness, Ram Karan, in his affidavit has also stated that he was tilling the land of the petitioner by his tractor. However, in his cross-examination, he had deposed that he had sold his tractor in the year 1997. The said witness also stated in his affidavit that he was giving water to the petitioner for irrigation from his tube-well. Whereas, in his cross-examination, he admitted that he did not own any tube-well and also admitted that he does not have any land adjoining to the land of the petitioner. The fourth witness, namely, Shri Rajender Singh Rana, also stated that he had been tilling the land of the petitioner. Accordingly, the Tehsildar recorded in his order that he failed to understand as to how many persons were tilling the land of the petitioner. Accordingly, the claim of the petitioner was dismissed.

59. Learned Senior Counsel further submitted that the statement of Bhoop Singh recorded on 12.04.2007 before the Tehsildar was an afterthought whereby stated that he and his brother Brahm are recorded owners of the agricultural land in Khasra No.41/19 (1-3). Khasra No.41/12 (2-13) of Village Nangli Poona was allotted to his late father Shri Anant Ram under 20-Point Programme of the Government. About 18 years ago, his father sold the land measuring 1 Bigha 4 Biswas out of 2 Bighas 13 Biswas to one person, namely, Shri Anil Kumar Aggarwal/respondent No.3. But, neither Anil Kumar Aggarwal nor any other person from his side ever cultivated/sown any crop over the land in the past. Late Shiv Charan, father of the petitioner was sowing crops over this land. However, Bhoop Singh stated that after the death of Shiv Charan, his only son Sukhbir Singh Kemwal has been sowing crops over the said land.

60. Mr. Nandrajog, Learned Senior Counsel submitted that the order dated 10.04.2008 of the Deputy Commissioner is perverse, without any evidence and decided in haste in favour of the petitioner. In its order, he recorded that Tehsildar (Narela) has rejected the claim of the petitioner on the ground that he was a Government servant and was staying in Delhi; therefore, it was not possible for him to cultivate the land. However, the Deputy Commissioner opined that a person can get paid services of any number of workers to cultivate the land. It is not necessary that the petitioner should himself plough his field or should know exactly, who is the real owner of the tractor being used for ploughing his field. If the reasoning of the said Tehsildar is accepted, it would not be possible to record Khasra Girdawari of thousands

of farm houses in Delhi whose owners are generally residing somewhere else. The cross-examination of the witnesses produced by the petitioner to prove his cultivatory possession has been cited to disprove the claim of the petitioner but the spot report of the Halka Patwari has been ignored while recording its opinion against the petitioner. The Halka Patwari has clearly mentioned that 'Jwar' was grown on the said land by the petitioner which is further reinforced by the testimony of the owner of the tube-well. Another important piece of evidence, i.e., filing of FIR against the opposite party for destroying the crops grown by the petitioner on the said land has been conveniently ignored by the Tehsildar (Narela) while passing the impugned orders. It is also a fact that no record/evidence of any sort has been brought up by the opposite party to establish his claim for being in cultivator possession of the suit land while at the same time Tehsildar (Narela) has rejected the testimony of witnesses put forward by the petitioner on frivolous grounds. However, the most glaring omission which has been committed by Sh. Lalit Mohan and Shri Sheo Shankar Singh, the then Tehsildars (Narela) is that they have completely overlooked the fact that Shri Ravinder Singh, the GPA holder for Anil Kumar Aggarwal had filed a writ petition No.1667/2005 in this Court whereby prayed for restoration of possession of the suit land which was allegedly taken illegally by the petitioner. The said writ petition was dismissed by this Court vide order dated 29.09.2005. In yet another writ petition No. 2657/2007, filed in this Court, Shri Ravinder Singh had prayed for similar reliefs. This writ petition was also dismissed vide order dated 17.08.2007. Thus, it is evident from the aforementioned writ petitions and

their dismissals vide orders dated 29.09.2005 and 17.08.2007 that possession of the suit land was not with respondent No.3 or his GPA holder Shri Ravinder Singh/respondent No.4. Accordingly, the Deputy Commissioner set aside the orders passed by Shri Lalit Mohan and Shri Sheo Shankar Singh, Tehsildars (Narela) being arbitrary which resulted in gross miscarriage of justice. Consequently, directed that name of the petitioner be entered in the Khasra Girdawaries for years 2004, 2005 and 2006 for the Rabi and Kharif crops with respect to Khasra No.41/12(1-04), Village Nangli Poona, Delhi.

61. However, the Financial Commissioner in its impugned order dated 15.12.2009 recorded that the Deputy Commissioner has gone wrong in relying upon the report of Halka Patwari for the reason that there is no such report, rather one Halka Patwari has been cross-examined and he has admitted that he did not find the petitioner in possession. The Deputy Commissioner has merely gone by the statements of the witnesses produced by the petitioner and has not considered their cross-examinations. In so far as other documents filed by the petitioner are concerned, the Financial Commissioner found that the Deputy Commissioner did not consider any other document than the writ petitions. As an appellate court, the Financial Commissioner recorded that the other documents sought to be relied upon by the petitioner did not form part of the record of the trial court. As informed, all the documents relied upon by the petitioner were part of the charge-sheet which had been filed against respondent No.3/ Anil Kumar Aggarwal and his brothers. The documents sought to be relied upon by the petitioner on the one hand, remained to be scrutinized by the authorities concerned and at the

same time are still to be scrutinized by the court on whose records they have been filed. Therefore, there was hardly any ground for taking cognizance of any such documents. The certificate of possession issued by the Prosecution Department hardly carries any weight, more particularly when the charge-sheet filed by the prosecution is yet to show its *prima facie* credibility.

62. The Financial Commissioner further recorded that in this country, there is presumption of innocence unless proved guilty. This is additional ground for not relying on other documents which admittedly form part of the charge sheet and have been sought to be relied upon by the petitioner. At the same time, if cognizance of the documents sought to be relied upon by the petitioner is taken, then it cannot overlook the report dated 03.10.2007 issued by the Tehsildar (Narela), who is statutorily empowered and authorized to make spot inspection and determine factual position with respect to possession.

63. The Financial Commissioner in his order further recorded that the dispute involved in order dated 22.06.2006 was with respect to factum of possession for Rabi and Kharif season of 2004 and Rabi season of 2005, whereas the order dated 13.08.2007 relates to Kharif 2006. As per Rule 301 of the Delhi Land Revenue Rules, the Rabi Crop portal tour commences on 1st February and ends on 15th March whereas Kharif Crop portal tour commences on 1st September and ends on 31st October. There is nothing to support possession of the petitioner for the period prior to 06.04.2005. So far as the order dated 13.08.2007 is concerned, same has been passed on the

basis of site visit. Accordingly, the order dated 10.04.2008 passed by the Deputy Commissioner was set aside.

64. Mr. Nandrajog, Learned Senior Counsel submitted that the petitioner relied upon documents which were filed subsequently, i.e., Halka Patwari report was not before the Tehsildar whereas relied upon by the Deputy Commissioner. In such eventuality the Deputy Commissioner ought to remand the matter back to the Tehsildar which he failed to do so. Moreover, second Tehsildar filed his report dated 03.10.2007 whereby stated that respondent No.3 was in possession. No evidence was led by the petitioner on the documents filed before the Deputy Commissioner. The report of the Kanungo has not been examined in the court of law, therefore, that report has no bearing. The petitioner had filed a copy of charge-sheet before the Deputy Commissioner and the same has been relied upon without testing the authenticity of the same.

65. Learned Senior Counsel further submitted that both the above mentioned Tehsildars passed orders in favour of the respondent No.3 and the Financial Commissioner also recorded its opinion in favour of the respondent Nos. 3 and 4. The said respondents are relying upon the sale deed by which actual physical possession has been handed over whereas the petitioner is relying upon the possession on the basis of report filed by Shri Rajender Singh, Kanungo.

66. Mr. Sudhir Nandrajog, learned senior counsel submitted that the petitioner had filed a suit under Section 85 of the Act on 13.01.2005 before

the SDM, Narela, seeking declaration of Bhumidhari rights in his favour which is still pending for adjudication. As per Section 20 of the Act, any proceeding pending in any court has to be stayed unless it is a decree or order which had become final before the commencement of this Act.

67. Building of the case of the petitioner is that the petitioner has been cultivating and growing various crops in the entire total area of Khasra No. 41/12 for the last over fifteen years. In the year 2003-04, petitioner has grown the crops of 'subji' and 'wheat' in the entire area of Khasra mentioned above. Accordingly, he made applications dated 20.12.2004 and dated 12.01.2005 to Tehsildar/CO Village Nangli Poona, which were received in the office on 12.01.2005, whereby the petitioner submitted that he has been cultivating and growing various crops in the entire area of Khasra No.41/12 for the last fifteen years. He had sown the crop of 'Barsam' in the entire area of Khasra No.41/12, whereas, in the evidence before the Tehsildar, the petitioner submitted that he had sowed the crop of 'jwar'.

68. Learned senior counsel submitted that it shows the petitioner was never in possession of the land in Khasra No.41/12 from the last fifteen years and the said fact had not been mentioned by his father. Moreover, the petitioner never applied for correction of revenue record. Hence, the presumption has to be recorded against the petitioner when all five witnesses failed in cross-examination. As per Section 101 of the Indian Evidence Act, 1872, when a person is bound to prove the existence of any fact, then burden of proof lies on that person and as per Section 102 of the Evidence Act, the burden of

proof of a statement or proceedings lies on that person who would fail if no evidence at all will be given on either side. Thus, the petitioner is bound by the Statute to prove the cultivatory possession by leading cogent evidence, as per Section 106 of the Evidence Act, which he failed to do so.

69. The report of Halka Patwari was not before the Revenue Assistant, however, first time; it was filed before the Dy. Commissioner in appeal. None of these documents were given to the respondents, which need to be proved by cross-examining the author of the said documents. The report of Kanungo Rajinder Singh cannot be taken into consideration since the said report was not exhibited before the Revenue Assistant and said Rajinder Singh has not been examined. However, the learned Deputy Commissioner relied upon the documents which were not before the Revenue Assistant.

70. To strengthen his arguments, learned senior counsel has relied upon the case of ***Mrs. Reba Mukherjee & Ors. Vs. Rajiv Behl, 147 (2008), DLT 99***, wherein this Court in held as under:-

“9. The other reason which can be culled out from the impugned order interest of justice requiring evidence to be led on the issue, suffice would it be to state that interest of justice cannot be used as in an unruly and unbridled .

10. When parties have led their evidence and closed the same, it is impermissible to allow a party to fill up the gaps and lacuna unless compelling circumstances are brought on record as to why a particular witness could not be examined by the party while leading evidence. A prayer made to examine a person as a witness has to be on basis of strong and compelling facts more

so when this prayer is made even after defendant's evidence is led.

11. Irreparable injustice may result to the defendant in permitting plaintiff to lead evidence to prove gaps in the case of the plaintiff for the reason defendant's evidence is always led keeping in view the evidence led by the plaintiff.”

71. On the same issue also relied upon the case of **Nikunj Kumar Gupta (Master) & Anr. Vs. State & Ors. 2003 VIII AD (Delhi) 75**, wherein the Apex Court held as under:-

“13. As regards the adjudication by Tehsildar, it suffers from gross infirmity. The Tehsildar did not make any proper inquiry as to on what basis and on what documents, the entry in Khasra Girdawari as to the possession of the petitioner was made. Until and unless there is some document executed by the owner of the property to the persons in whose favour entry is sought to be made in Khasra Girdawari or any other document by virtue of which possession is handed over the Patwari is not expected to suddenly change the name of occupants or possession of the land.

14. It is highly preposterous that without producing any receipt or document of purchase of land the entry was made in the name of the petitioners. If entries in the Khasra Girdawari are changed like this, that is, without any documentary proof of possession or purchase, nobody's property would be safe as with one stroke of pen “Patwari” or “Tehsildar” can change the possessory or proprietary title of a person in respect of agricultural land. Rather it was expected from the Tehsildar to order inquiry into the conduct of the “Patwari” for changing the entries in “Khasra Girdawari” without any proof of change of possession or ownership. Thus to say that order of Tehsildar as to correctness of entry in Khasra Girdawari is final or

unchallengeable under Section 39 of the Act is neither correct nor acceptable.”

72. Also relied upon the case of **Montari Industries Ltd. & Anr. Vs. State & Anr., 114 (2004) DLT 416**, wherein this Court held as under:-

“4. In view of the fact that Section 294, Cr.P.C. applications were moved at the fag end of the trial, this Court is of the considered view that the learned trial Judge was justified in declining the requests. Section 294, Cr.P.C. is aimed at dispensing with formal proof of documents and as such, the admission/denial of documents has to take place at the initial stage so that after the admission/denial, both the parties have opportunity to prove denied documents or rebut admitted documents or lead evidence to give Explanation, if any, in regard to the documents. If admission/ denial is sought to be done at the end of the trial, the party which has completed its evidence may be seriously prejudiced. This course, Therefore, cannot be adopted after availing the opportunity to lead evidence or confront the opposite party with documents. It cannot be to spring a surprise and create confusion for the opposite party. Under the circumstances, the prayer of the petitioners to call upon the complaint to admit or deny certain documents at the stage when prosecution evidence was already over and even defense evidence was on its last leg was neither justified nor warranted. Hence, the learned trial Judge was justified in declining the request, This Court does not find any infirmity in the said orders.”

73. In case of **Ambika Prasad Thakur & Ors. Etc. Vs. Ram Ekbal Rai (Dead) by his Legal Representatives & Ors. Etc., AIR 1966 SC 605**, the Apex Court held as under:-

"15. The survey records of 1892, 1895, 1904 and 1909 disclose that the ancestors of the plaintiffs held some of the frontier plots

of Dubha Mal. The High Court was, therefore, asked to draw the inference that their ancestors held those plots during 1845 to 1863 when the Taufir lands accreted. The question is whether such an inference should be drawn. Now, if a thing or a state of things is shown to exist, an inference of its continuity within a reasonably proximate time both forwards and backwards may sometimes be drawn. The presumption of future continuance is noticed in Illustration (d) to S. 114 of the Indian Evidence Act, 1872. In appropriate cases, an inference of the continuity of a thing or state of things backwards may be drawn under this section, though on this point the section does not give a separate illustration. The rule that the presumption of continuance may operate retrospectively has been recognised both in India, see Anangamanjari Chowdrani v. Tirupurasoondari Chowdrani 14 IA 101 at 15. 110 (PC) and England - see Bristow v. Cormican, (1878) 3 AC 641 at PP. 669,670; Doe D. Hopley v. Young (1845) 8 QB 63: 115 ER 798. The broad observation in Manmatha Nath v. Girishchandra Roy 38 Cal WN 763 at 770: AIR 1934 Cal 707 at 708 and Hamendranath v. Inanendra Prasanna, 40 Cal WN 115 at p. 117: AIR 1935 Cal 702 at 704 that there is no rule of evidence by which one can presume the continuity of things backwards cannot be supported. The presumption of continuity weakens with the passage of time. How far the presumption may be drawn both backwards and forwards depends upon the nature of the thing and the surrounding circumstances. In the present case the High Court rightly refused to draw the inference from the state of things during 1892 to 1909 that the ancestors of the plaintiffs held frontier plots of Dubha Mal in 1863. The High Court pointed out that even during 1894 to 1905 the ownership of some of the plots had changed, and also that the frontier Mal plots and the corresponding Taufir plots were not always held by the same person. In 1845, part of the Mal lands was under water. The frontier Mal land reformed between 1845 to 1863 were subject to annual inundation. It is well known that settlements of Char lands are seasonal and temporary. There is a considerable gap

of time between 1892 and 1845. It is not safe to assume that the state of things during 1894 5 50 1905 existed during 1845 to 1863.”

74. Mr.Nandrajog submitted that this Court under jurisdiction of Article 226 of the Constitution of India is not to re-appreciate the evidence. The present petition is a second appeal. The impugned order passed by the Financial Commissioner has not been attacked by the petitioner on the ground of violation of fundamental procedure, therefore, the present petition is liable to be dismissed.

75. I have heard the learned counsels for the parties.

76. It is important to note that Ravinder Singh/respondent No.4 had filed a criminal petition bearing No.1667/2005 before this Court for issuance of directions thereby directing the petitioner (respondent No.5 therein) to restore the possession of respondent No.4 on the land in question and sought quashing of FIR No. 254/2005 registered under Sections 427/447/506/34 of Indian Penal Code, 1860, at Police Station Samaypur Badli, however, same was dismissed vide order dated 29.09.2005.

77. Moreover, vide prayer (b) of the aforesaid writ petition, the aforementioned respondent sought relief as under:-

“b. The respondent No.5 to restore the possession of land in question to the petitioner, which was illegally taken by respondent No.1, Sukhbir Singh Kemwal (petitioner herein) in collusion with respondent Nos. 2 and 5, i.e., SHO, P.S. Samaypur Badli and Hari Ram ASI, Investigating Officer of FIR No.254/2005, P.S. Samaypur Badli respectively.”

78. The aforementioned facts establish that till September, 2005, when respondent No.4 filed the aforesaid writ petition, the petitioner was in possession of the land in question. In addition, the respondent No.4, filed another petition bearing No. 2657/2006, whereby also sought directions against the Commissioner of Police (respondent No.5 therein) to restore the possession upon the land in question, however, vide order dated 17.08.2007, the same was dismissed for non-prosecution. It is important to note that the said petition never been got restored and hence the order of dismissal attained finality.

79. On 06.01.2006, respondent No.4 filed objections against the illegal entry of the petitioner in Form P-5 for land measuring about 1300 square yards out of Khasra No.41/12/2, measuring about 2 Bighas 13 Biswas, whereby prayed as under:-

“That in view of the above mentioned facts and circumstances, the Petitioner is not entitled to get his name entered in the Form P-5 rather it is the objector who is legally entitled to get his name entered in the Form P-5 as the objector has been dispossessed illegally and unauthorizedly by the Petitioner in collusion with the police official.”

80. Vide order dated 04.05.2005, Tehsildar, Narela, directed the Halka Patwari to visit the site and file the report. Accordingly, Shri Rajinder Singh, Kanungo, submitted its report dated 28.05.2005 as under:-

“Inspected the spot of Khasra No.41/12 of Village Nangli Poona as per the application received. The crop of ‘jwar’ was found cultivated in the said Khasra. The owner of the Tube Well used to irrigate the crop, told on enquiry that ‘jwar’ crop had been

cultivated by Sukhbir Singh Kemwal. Khasra No.41/12-19 (min.) was also found added to this field. The crop of 'jwar' has been cultivated on the land in question. The report is accordingly submitted."

81. From the facts noted above, it is established that since 24.03.2005 not a single entry was made in the revenue record either in favour of respondent No.4 or Shri Ram Lal Aggarwal, i.e., father of respondent No.3/Anil Kumar Aggarwal. Whereas, as per directions of Deputy Commissioner (North-West), SDM and Tehsildar, the cultivatory possession in Khasra Girdawaris for the crops of Kharif 2005-06, Kharif 2006-07 and Rabi 2009 in respect of Khasra No.41/12 (1.4) was recorded in the name of the petitioner.

82. In Form P-5, as per Rule 66, showing list of changes dated 15.10.2009, wherein Column No.8, i.e., name of the person (s) found in actual possession other than recorded in Column No. 4 and 5 as under:-

*"Sukhbir Singh Kemwal S/o Shri Shiv Charan **"Sha Deh"***

On the bottom of this document, recorded as under:-

"Sir,

A Khasra No.41/12 min.(1-4) Village Nangli Poona, Shri Sukhbir Singh Kemwal cultivated the crop of 'Dhancha' and on the spot he is in cultivatory possession. Hence, both the parties be informed.

Sd/- Patwari/15.10.2009"

83. In the aforesaid list dated 15.10.2009, against column No.2, entry in column No.4 of Khasra, name mentioned as 'Anil Kumar Aggarwal S/o

Ramlal Aggarwal'. However, in the list of changes dated 16.10.2009, column No.2 mentions name of 'Bhoop Singh Brahm Prakash S/o Anant Ram', "***Sha Deh***". Entry in column No.8 remained the same in the name of the petitioner. In this report, it is recorded that:-

"Khasra No.41/19 min.(0-15) Village Nangli Poona, Shri Sukhbir Singh Kemwal cultivated the crop of 'Dhancha' and on the spot he is in cultivatory possession. Hence, both the parties be informed.

Sd/- Patwari/15.10.2009"

84. As per Section 67(d) of the Act, when a person has been deprived of possession, his right to recover the same is for the limited period, i.e., three years. Section 85 of the Act, prescribes that if a suit is not filed under Section 84 of the Act or a decree obtained in any suit, is not executed within a period of limitation provided for filing of the suit of execution of decree, then the person taking or retaining possession shall become a Bhumidhar thereof.

85. Shri Anant Ram, original allottee of the land moved an application on 22.01.1982 before SDM, for being declared Bhumidhar in respect of Khasra No. 41/12 (4-16), who vide order dated 19.04.1983 directed as under:-

"I hereby ordered declaring Bhumidhar to the applicant mentioned above."

86. It is pertinent to mention here that vide circular dated 03.10.1996, issued from the Office of Additional District Magistrate (Revenue) and the Deputy Commissioner's Office that the transfer of land where Bhumidhari

rights have been conferred under Section 74(4) of the Act; to the genuine allottee of Panchayat land under 20-Point Programme; land notified under Section 4 of Land Acquisition Act; the land forming part of joint Khata; transfer of any land; is in violation of Section 33 of the Act.

87. Moreover, in the case of ***Pawan Kumar and Ganga Bishan Gupta Vs. Financial Commissioner and Ors. 107 (2203), Delhi Law Times 726***, it is held that where land is allotted under 20-Point Programme for their economic upliftment, sale of such land would not be permissible as it would defeat very purpose of allotment of land to such landless labourers. The successors-in-interest have no *locus standi* to challenge this restriction imposed by Assistant Revenue.

88. Moreover, in order dated 17.06.1998, Development Commissioner (Panchayat Unit), Govt. of NCT of Delhi, issued order as under:

- (1) As per the decision of Hon'ble Supreme Court in case titled as ***Murlidhar Dayandeo Kesekar Vs. Vishwanath Pandu Barde and Anr., (supra)***, the assigned land cannot be permitted to be sold or converted to non-agricultural use.
- (2) As per provision of Rule-170(1) and 2(2) of the Delhi Panchayat Raj (Amendment) Rules, 1976, Gaon Sabha land was leased out to the lapse of 20-Point Programme for house, sites and agricultural use @ 0.5 P. Per Sq. Yd. and therefore it is categorised as: "assigned land".

(3) Therefore, in the light of the Hon'ble Supreme Court Judgment, it is intimated that Gaon Sabha land for house, sites and agricultural purpose under 20-Point Programme is not permitted to be sold or converted to non-agricultural use. Thus, orders should be followed meticulously and scrupulously and any lapse in this regard will be viewed seriously.

89. Shri Ram Kumar Aggarwal made his statement on 07.06.2005 (Annexure P-22) before Inspector (Vigilance), Delhi Police, whereby stated that he purchased the agricultural land of 1300 square yards in Khasra No.41/12/2 of Village Nangli Poona, Delhi, on 29.08.1989 from Shri Anant Ram for an amount of Rs.45,000/-. Thereafter, on 28.05.1990, he transferred this land in the name of his middle son Anil Kumar Aggarwal/respondent No.3. He and his son Anil Kumar could not look after their agricultural land being located at far away distance from their residence. They also could not find out as to what was happening at their said land. Anil Kumar/respondent No. 3 was not aware of location of said land. His son Anil Kumar sold the land measuring 1200 square yards from Khasra No. 41/12/2 to Ravinder Singh/respondent No. 4 for an amount of Rs.1,50,000/-.

90. As per Section 33 of the Act, no Bhumidhar shall have the right to transfer by sale or gift or otherwise any land to any person, other than a religious or charitable institution or any person in charge of any such Bhoodan movement, as the Chief Commissioner may, by notification in the Official Gazette, specify, where as a result of the transfer, the transferor shall

be left with less than eight standard acres in the Union Territory of Delhi, provided that the Chief Commissioner may exempt from the operation of this Section, the transfer of any land made before the 1st day of December, 1958, if the land covered by such transfer does not exceed one acre in area and is used or intended to be used for purposes other than those mentioned in clause (13) of Section 3. Thus, the land in question was not permissible to be sold under Sections 33, 67 and 85 of the Act, hence, the purchase claimed by Ram Lal Aggarwal and respondent Nos. 3 and 4 was illegal and void *ab-initio*. Accordingly, since the purchase was illegal, therefore, the mutation automatically becomes illegal. Consequently, respondent Nos. 3 and 4 have no right to claim Bhumidhari rights over the said land.

91. In pursuance of notice under Section 91 Cr.P.C., concerned Tehsildar submitted its report to SHO, Police Station Swaroop Nagar, by stating therein that the cultivator of the land bearing Khasra No. 41/19 was Shri Ravinder Singh s/o Shri Kartar Singh and the crops of 'jwar' and 'wheat' were harvested thereon. However, on the aforesaid report, the petitioner made a complaint to the police which was culminated into FIR No. 16/07 dated 21.09.2007, Police Station Swaroop Nagar, New Delhi. After investigation, a charge sheet dated 16.04.2008 was filed against Shri Lalit Mohan and Shri Shiv Shankar Singh, the then Tehsildars of Narela, Ashok Kumar Verma, the Tehsildar at the relevant time, Pawan Bhardwaj, Ex Halka Patwari of Village Nangli Poona, Vijay Dogra, Ex SDM, Narela and Manjeet Singh Rana, Ex Tehsildar, Narela.

92. It is pertinent to mention here that although the aforesaid charge sheet was rejected on a technical ground, however, the petitioner has challenged the same before this Court which is pending for adjudication.

93. It is pertinent to mention here that respondent Nos. 3 and 4 have not produced any witness in support of their case, whereas, the petitioner has examined four witnesses before the Tehsildar, despite the Tehsildar rejected the applications dated 20.12.2004 and 12.01.2005 filed by the petitioner by ignoring the evidence led by the petitioner and the site inspection report filed by Rajinder Singh, Kanungo.

94. Being aggrieved, the petitioner filed an appeal before Deputy Commissioner (North West), Delhi, same was allowed vide order dated 10.04.2008.

95. Despite, respondent No.4/Ravinder Singh and his associates stolen the crop of 'jwar' standing upon the suit land in Khasra No. 41/12, therefore, provisions of Sections 3(1)(iv), (v) and 3 (2)(vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 were invoked against Ravinder Singh and his associates, which is pending trial.

96. It is pertinent to mention here that the repartition under Section 21 of the Consolidation Act was carried out from 31.03.2000 to 10.04.2000. During the course of repartition, the land which stood sold to Shri Sushil Kumar Jain was given Khasra No. 41/19, whereas the land which was sold to respondent No. 3 was renumbered as Khasra No.41/12/2.

97. The important fact which has been ignored by all the Authorities except Deputy Commissioner is that Bhoop Singh s/o Anant Ram made his statement on 12.04.2007 before the Tehsildar, whereby stated that he and his brother Brahm Prakash were recorded owners of the agricultural land in Khasra No.41/19 (1-3). Khasra No. 41/12 (2-13) of Village Nangli Poona, Delhi, was allotted to his late father Shri Anant Ram under 20-Point Programme of the Government. About 18 years ago, his father sold 1 Bigha 4 Biswas land out of 2 Bighas 13 Biswas to one person, namely, Shri Anil Kumar Aggarwal/respondent No.3, but neither Anil Kumar Aggarwal nor any other person from his side ever cultivated/sown any crop over the land in the past. Late Shri Shiv Charan father of the petitioner was sowing crops over this land. After the death of Shiv Charan, his only son, Sukhbir Singh Kemwal/petitioner has been sowing crops over the said land. This witness is a material one and his testimony remained unrebutted.

98. The Tehsildar, Narela, has rejected the claim of the petitioner on the ground that he was government servant and was staying in Delhi, therefore, not possible for him to cultivate the land. This reasoning of the Tehsildar is perverse and arbitrary for the reason that for cultivation of a land the physical possession is required not the personal presence. Moreover, a person can get paid services of any number of workers to cultivate the land. It is not necessary that the petitioner himself ought to have ploughed his field or should know exactly, who is the real owner of the Tractor being used for ploughing his field. However, his possession over the land is important,

which the petitioner has established in view of the witnesses examined and material placed on record.

99. The Financial Commissioner has erred in not relying upon the report of Rajinder Singh, Kanungo, statement of Bhoop Singh and other facts as discussed above, however, relied upon the testimony of Halka Patwari, who admitted in cross-examination that he did not find the petitioner in possession while passing its judgment dated 15.12.2009. The fact remains that the said Patwari also admitted that he did not file any report pursuant to order made by Tehsildar. There is no explanation as to why he did not file the report pursuant to the order passed by the Tehsildar, Narela.

100. In view of the above discussion, impugned order dated 15.12.2009 passed by the Financial Commissioner is hereby set aside and order dated 10.04.2008 passed by the Deputy Commissioner is upheld.

101. Consequently, the petition is allowed with no order as to costs.

Crl. M.A. 469/2011 and CM. No. 2393/2011

With the disposal of the instant petition, these applications have become *infructuous*. The same are accordingly dismissed.

**SURESH KAIT
(JUDGE)**

OCTOBER 29, 2014
sb/jg/RS