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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 5th November, 2014

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W.P.(C) 7563/2014

MAHINDER SINGH & ANR

..... Petitioners

Represented by : Mr. B.S. Maan, Adv.

Versus

GAON SABHA GHITORNI

..... Respondent

Represented by : None.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

W.P.(C) 7563/2014

1. The present petition is directed against the impugned order dated 11th July, 2014 passed by the Financial Commissioner, Delhi, in Case No. 219/2011, whereby the revision petition filed on behalf of the petitioners under Section 72 of the Delhi Land Reforms Act, 1954 read with Section 187 of Delhi Reforms Act, 1954 (in short 'DLR Act') has been dismissed.
2. Also assailed the order dated 17th March, 2003, passed by the Revenue Assistant, Vasant Vihar, New Delhi, and order dated 30th June, 2011, passed by the Deputy Commissioner, (South West), Delhi.
3. The facts of the case are that proceedings under Section 81 of DLR Act were initiated by SDM/RA/Vasant Vihar on the report of Halka Patwari

dated 5th February, 2000 against the petitioners, on the ground that construction of house is going on in Khasra No. 843/1 (03-08) of village Ghitorni, Tehsil Vasant Vihar, New Delhi. Accordingly notices were issued and parties made their presence through counsels.

4. The petitioners filed a reply on 21st January, 2001 and rejoinder thereto was filed on 4th July, 2002, by Gaon Sabha Ghitorni. Thereafter, fresh land use report was also called through Tehsildar which was received on 30th January, 2003 and placed on record.

5. During arguments before the Revenue Assistant, counsel for respondent filed copy of Khasra Girdawaris pertaining to the land in question for the years 1983-84, 1984-85, 1994-95 in support of his claim that the case is time barred and hence the proceedings should be dropped.

6. On the other hand, the Gaon Sabha's counsel stated that Khasra Girdawaris are inconsistent and violation must have been proved within three years on which case was instituted.

7. After hearing these parties, the Land Revenue Assistant passed the order, which reads as under:-

“From perusal of records and after hearing both the parties, I have arrived at the conclusion that respondent has failed to justify the use of land for agriculture purposes. Large scale use of land for commercial purposes at Mehrauli-Gurgaon road by bhoomidars does not grant any concession of Sec. 3(12) of DLR Act to respondent. The Khasra Girdawari for the year 91-92, 92-93 & 93-94 speaks about existance of boundary wall, tube-well, service station etc., which could be at that time too considered to be Government but that was also not correct appreciation of the law. Permissible improvements used for agricultural

purposes would only be applicable as improvement. The case in particular is a blatant violation of Sec. 81 DLR Act para 4-6 of the reply by respondent are also incomplete. With these observations I Peter Bara, R.A. vest the suit land into gaon sabha. Announced in open court. File consign to record room”.

8. Being aggrieved, the petitioners filed appeal before the Deputy Commissioner, South West, New Delhi, whereby stated that the impugned judgment and decree passed by the Revenue Assistant is contrary to provisions of Section 81 of DLR Act. It was submitted that the final decree could not be passed in above said case as no preliminary decree has been passed by the Revenue Assistant, which is mandatory in nature and in the absence of preliminary decree, final decree cannot be passed.

9. Learned Deputy Commissioner passed the order which reads as under:-

“Ld. Counsel for appellants has also quoted the orders of the Urban Development Department, Govt. of NCT of Delhi wherein it has been ordered that for the purpose of regularization of unauthorized colonies, all lands vested in Gaon Sabha under Section 81 of Delhi Land Reforms Act, 1954 where the physical possession is with the original land owners, shall be treated as private lands. On the basis of these submissions, learned counsel for appellants have pleaded that appeal may be allowed and the impugned order passed by the Revenue Assistant may be set aside. Counsel for Gaon Sabha Shri S.S. Dalal has opposed the appeal on the ground that there is inconsistency in the Khasra Girdwaris submitted by the appellants of the years 1991-92, 1992-93 & 1993-94. In the entries of different years different type of use of

land has been indicated and most of them are in violation of Section 81 of DLR Act. He has also argued that the report of the Halka Patwari dated 08/05/2002 states that in the Khasra No. 843/1 (03-08) houses etc. are being built which is violation of Section 81. Ld. Counsel for Gaon Sabha has further pleaded that the appellants were continuing the construction of the houses etc. and therefore, the limitation period is extended till the date of the completion of the construction. Thus the word "from the date of the unlawful use of the land" is in the present case continuing and continuous construction automatically extends the limitation period.

On the basis of the above facts and records submitted by the parties, there is no doubt about the fact that the suit land is not being used for agricultural purposes and therefore violation of the provisions of Section 81 is there. As regard to limitation of three years for initiating action for such misuse in the present case as per the records misuse is continuous and the construction of houses etc. were going on even on day of filing reports by the Patwari. The above two order cited by the Ld. Counsel for appellants do not speak about the misuse stated earlier and still continuing. It cannot be interpreted that period of three years, once passed, gives immunity to the appellants to do more and more constructions and no action can be initiated on it. The above two judgments are applicable only for the constructions carried out before 3 years. But in the present case, constructions were being carried out even on the date of visit of Patwari as reported by him. Therefore in the present case the position is different from the two judgments of superior courts quoted by the Ld. Counsel for appellants. As

regards, the order of the Urban Development Department of Government of NCT of Delhi, the said order does not in any way affects the provisions of DLR Act, 1954 and therefore not relevant for the present case. I therefore do not find any infirmity in the order passed by SDM/RA Vasant Vihar dated 17.03.2003 and therefore do not wish to interfere with that. The appeal filed by the appellants is therefore dismissed.

10. Being further aggrieved, the petitioners filed the revision petition before the Financial Commissioner, same was also dismissed vide order dated 11th July, 2014, which reads as under :-

“1. Heard both the counsels exhaustively.

2. Counsel for the petitioner raised the issue of limitation, however, in counter counsel for Gaon Sabha argued that this issue has already been decided by the Ld. Deputy Commissioner vide impugned order dated June 30, 2011. However, counsel for the Gram Sabha established again that there was continuous construction at the land in question that leads to extension of limitation period.

3. Further, counsel for the petitioner submitted that the land in question has been regularized by the Govt. under regularization of un-authorized colonies, but to establish his claim, counsel for petitioner could not submit any supporting document.

4. After hearing the arguments, and considering the facts and relevant record of the case, the revision petition is dismissed.

5. File be consigned to record room after completion”.

11. Mr.B.S. Maan, learned counsel appearing on behalf of the petitioners submits that all the authorities below have passed order contrary to the provisions of Section 82 of DLR Act. The final order passed by the Revenue Assistant, in the absence of preliminary decree, is illegal and liable to be set aside. All the authorities below have committed a serious error in not bringing the entries in the Khasra Girdawaris for the year 1983-84, 1984-85 and 1994-95 pertaining to the land in question which clearly reflected that the land in question was already put and used for non-agricultural purpose.

12. Moreover, the Delhi Land Reforms Act, 1954, does not give power to any authority to vest the land in Gram Sabha beyond the period of three years from the date of misuse of the land. And if any misuse was found, that was much before the date of inspection carried out by Halka Patwari.

13. To strengthen his arguments, learned counsel has relied upon a case of Gaon Sabha Samhalka Vs. R.N. Sahni and others decided on 5th August, 2004 in LPA by the learned Division Bench of this Court. The relevant Paras of the said judgment reads as under:-

“19. In order to decide the issue of the correct interpretation of Entry 17, in the first Schedule to the Act, it has to be noticed that the relevant expression occurring in the 4th column is "from the date of unlawful use of the land." The starting point of the period of limitation of three years is not dependent upon a subjective factor such as knowledge of any person or authority. The statutory intendment apparent from a reading of

the first Schedule which prescribes various periods of limitation or different proceedings clearly point to the existence or occurrence of such objective events from which time begins to run for the purposes of reckoning limitation.....

20. The well-known canon of statutory interpretation embodied in the maxim 'Expression units est. exclusion altruism'- i.e. what is expressly mentioned in one place but not in another must be taken to be deliberately omitted has been resorted to frequently by the Supreme Court.¹ That rule would squarely apply to the present case. The express allusion to knowledge in Entry 15 leads to the conclusion that knowledge has no role to play in respect of the other periods of limitation under the Act

21. It is, therefore, clear that where Parliament intended knowledge to be the basis upon which time is to commence for the purposes of reckoning limitation, the Statute has enacted it to be so. This excludes the "knowledge" based construction canvassed by Mr. Shali, in respect of Entry 17(ii)

22. So far as the argument of an interpretation based on the objects, or purpose of the enactment is concerned, it is settled law that where the words of a statute are plain, there can be no recourse to external aids.² Hence the plain meaning of the expression "use" in Entry 17 has to be applied. Consequently, the limitation (for taking action) commenced in the present case at least from 1988, when the use of the lands had changed. The proceedings were started on 29/01/1993, admittedly beyond the period of three years.

25. In view of the above discussion, inescapable conclusion is that the period of limitation prescribed by entry 17 in the first Schedule to the

Delhi Land Reforms Act 1954 is the actual date of unlawful use of land and not the date of knowledge.”

14. The proceedings under Section 81 of DLR Act, were initiated against the petitioners by SDM/Revenue Assistant, Vasant Vihar, New Delhi, on the report dated 05.02.2002 of Halka Patwari on the ground that construction of house was going on in Khasra No.843/1 (03-08) of Village Ghitorni, Tehsil Vasant Vihar, New Delhi. The petitioners have failed to justify the use of land other than the agriculture purposes. Large scale of the land had been used for commercial purposes at Mehrauli-Gurgaon Road, which was not allowed by the respondent under Section 3(12) of DLR Act. Thus, the petitioners had violated the provisions of Section 81 of DLR Act.

15. As recorded by the learned Deputy Commissioner in its order that there has been inconsistencies in the Khasra-Girdawaris submitted by the petitioners of the years 1991-92, 1992-93 and 1993-94, In the entries of different years, different types of use of land has been indicated and most of them are in violation of Section 81 of DLR Act.

16. Moreover, as per second report of Halka Patwari dated 08.05.2002 in Khasra No.843/1 (03-08), houses etc. are being built which is again in violation of provisions of Section 81 of DLR Act.

17. Thus, the petitioners were continuing in construction of houses etc. and even on the date of inspection of the Halka Patwari, the constructions were going on, thus, as argued by learned counsel for the petitioners, the limitation is extended till the date, unlawful construction of the land was found over the land in question.

18. The fact remains that in the reply filed by the petitioners before the Revenue Assistant, it has been stated that the petitioners had removed all the

marbles on that date itself when the petitioners have received the show cause notice under Section 81 of DLR Act, and has shifted the marble out of Delhi. Thus, admitted by the petitioners that they were using the land for the purpose other than the agricultural purposes.

19. The petitioners cannot be given the licence to continue the unlawful construction in violation of provisions of Section 81 of DLR Act.

20. In view of above, I find no merit in the writ petition which is hereby stands dismissed.

21. No order as to costs.

CM No. 17846/2014(stay)

In view of the order passed in the writ petition, the instant applicant has been rendered infructuous and dismissed as such.

**SURESH KAIT
(JUDGE)**

NOVEMBER 05, 2014
j/sb