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

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Date of Decision: 28.08.2019

+ W.P.(C) 10068/2016

SANTOSH KHURANA

..... Petitioner

Through: Mr.Atul Nigam and Mr.Randhir
Kumar, Advocates

Versus

THE FINANCIAL COMMISSIONER, GOVERNMENT
OF NCT OF DELHI & ORS

..... Respondents

Through: Ms.Sapna Chauhan, Adv. for DDA
Mr.Anil Tomar, Adv. for R1/GNCTD
Mr.Naushad Ahmed Khan, ASC
(Civil) with Mr.Zakid Hanief and
Mr.Manish Chauhan, Advs. for
GNCTD.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. This writ petition is filed by the petitioner seeking a writ of certiorari/mandamus or any other appropriate writ to quash the order dated 16.10.2015 passed by the Financial Commissioner. Other connected reliefs are also sought including direction to respondent No.5 to expedite the process of regularization in terms of the Zonal Development Plan.
2. The case of the petitioner is that in 1989, construction was initiated for school building over land belonging to the Khurana Family through Khurana Education Society. In 1989 Shanti Gyan Niketan School was inaugurated. The khasra girdwari of 1990-91 also showed that the school

had been constructed on some of the khasras. A recognition letter was received from the Directorate of Education, Delhi in respect of the school on 30.03.1994. It is further pleaded that the school was upgraded/expanded from 1994-95 to 1997-98. An ad hoc affiliation was also granted by CBSE. House tax assessment order in respect of the school was also passed in the year 2000.

3. On 05.03.2004 Halqa Patwari sent a report in respect of the land use stating it to be contrary to Section 81 of the Delhi Land Reforms Act (hereinafter referred to as 'the DLR Act'). A show cause notice was issued under Section 81 of the DLR Act on 24.04.2004. On 14.05.2008 a restraint order was passed under Section 81 of the DLR Act. On 19.06.2008 a conditional order was passed stating that the land be converted back for agricultural purpose within 3 months from the date of the order failing which the land would be vested in the Gaon Sabha and the petitioner thereafter would be ejected therefrom.

4. On 17.07.2012, a final order was passed stating that the land is being used for non-agricultural purposes and that the land stands vested in Gaon Sabha and the bhumidars stand ejected from the said land. An appeal was also filed before the Deputy Commissioner which was dismissed on 14.09.2012. Thereafter, a revision petition was filed before the Financial Commissioner. The same has also been dismissed on 16.10.2015.

5. I have heard learned counsel for the parties.

6. Learned counsel for the petitioner has challenged the impugned order on two counts. It is firstly stated relying upon Section 81 of the DLR Act that the present proceedings initiated by the respondent in 2004 are beyond the period of limitation which is stated to be three years. Reliance is placed

on the judgment of the Division Bench of this court in the case of *Gaon Sabha Samhalka vs. R.N. Sahni, 2004 (2) ILR (Del.) 128* to support the contention.

It is next submitted that in any case, during the pendency of these proceedings, the government had modified the Zonal Development plan for the area on 08.03.2010. The land in question has hence ceased to be agricultural land and the DLR Act has ceased to be applicable to this case. Hence, it is stated that the impugned order could have not have been passed by the authorities under Section 81 of the DLR Act. Reliance is placed on the counter-affidavit of the DDA to support the contention that the land in question is no longer an agriculture land and that the DLR Act does not apply.

7. Learned counsel appearing for respondents No. 1 to 4 has vehemently pleaded that the petitioner is guilty of violation of the provisions of the DLR Act as he has brazenly converted the agriculture land and started using the same for commercial purposes which is wholly contrary to the DLR Act. He states that the petitioner cannot be allowed to go scot free on the basis of the said submission.

He further submits that the said submissions regarding change in the Zonal Plan were never argued before any of the functionaries including before the Court of Revenue Assistant or before the concerned Deputy Commissioner or the Financial Commissioner. Hence, it is stated that no such benefit can be granted to the petitioner.

It is further pleaded that for the damages caused by the petitioner, they should without prejudice to the above contentions be burdened with heavy damages.

8. Section 81 of the DLR Act reads as follows:-

“81. Ejectment for use of land in contravention of the provisions of this Act. –

(1) A Bhumidhar or an Asami shall be liable to ejectment on the suit of the Gaon Sabha or the landholder, as the case may be, for using land for any purpose other than a purpose connected with agriculture, horticulture or animal husbandry, which includes pisciculture and poultry farming, and also pay damages equivalent to the cost of works which may be required to render the land capable of use for the said purposes.

(2) Notwithstanding anything contained in sub section (1) the Revenue Assistant also may, on receiving information or on his own motion, eject the Bhumidhar or Asami, as the case may be, and also recover the damages referred to in sub-section (1), after following such procedure as may be prescribed”

9. Schedule 1 read with Section 185 of the Delhi Land Reforms Act prescribes the period of limitation for the proceedings under Section 81.

Relevant clause reads as follows:

17.	81	(i) Suit for ejectment of Bhumidhar or Asami and for damages under sub-section (i).	Three years	From the date of unlawful use of the land.	As in the Court fees Act, 1870.	Revenue Assistant.	Deputy Commissioner.-
		(ii) Proceedings under sub - section (2).	Three years or one year from the date of passing of the Delhi land Reforms (Amendment) Act, 1965, Whichever period expires later.	-do-	Nil	-do-	-do-

10. Hence, for initiating proceedings under Section 81 of the DLR Act, a

period of three years is prescribed from the date of unlawful use of the land.

11. Reference may be had to the judgment of the Division Bench of this court in the case of *Gaon Sabha Samhalka vs. R.N. Sahni. (supra)*. The issue involved in the said judgment of this court was as follows:-

“2. The issue requiring determination in this appeal is the correct interpretation of entry 17 in the First Schedule to the Delhi Land Reforms Act 1954 [the "Act"]. That provision prescribes periods of limitation for initiation of eviction proceedings.”

The Court held as follows:-

“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. 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.

23. The issue can be viewed from another perspective. The power to initiate proceedings under Section 81(2) for ejectment is regulated by express terms of the enactment. One such express term is the limitation placed upon the power, namely, the period within which it can be exercised. Such limitation is not merely akin to statute or a provision that prescribes a period of limitation it also trenches upon the very exercise of power. Having not used the power within the parameters prescribed by the statute, it is not open to the authority, to wit, the Collector/ Additional Collector to take recourse to it beyond the conditions imposed by law.”

12. In the present case, a perusal of the impugned order passed by the Court of Revenue Estate would show that the said Court brushed aside the

objection of the petitioner of limitation on the grounds that the spirit of law cannot be circumvented by using the law of limitation if the very purpose of the law stands defeated under the garb of limitation. The Deputy Commissioner also in the impugned order dated 17.09.2012 reiterated the aforesaid findings recorded. A similar view has been expressed in the impugned order by the Financial Commissioner.

13. Some of the facts of this case may be noted. The petitioner has placed on record khasra girdwari for the period 1990-91 which clearly shows that the land in question is being used as a school. There are other documents available including letter from the office of the Regional Provident Fund Commissioner dated 26.12.1991, communication from the MCD, etc. which show that the school has been in existence for a long time. For the purpose of this petition, the date of khasra girdwari which is the revenue record maintained by the respondent is sufficient to show that even as per the revenue record, the school was running in 1990-91.

14. The Halka Patwari made his report on 05.03.2004 stated that the school is running. Based on this report, a notice was issued under Section 81 of the DLR Act by the SDM concerned on 24.04.2004 i.e. almost 14 years after the khasra girdwari records that the school is running in the area in question.

15. Keeping in view the stated legal position as noted above, it is manifest that the present proceedings initiated in 2004 were clearly barred by limitation.

16. The impugned orders to the extent they hold that the law of limitation cannot be used to circumvent a wrongful act are erroneous. Reference in this context may be had to the judgment of the Supreme Court in the case of

Popat & Kotecha Property v. State Bank of India Staff Association, (2005)

7 SCC 510, where the Supreme Court held as follows:

“7. The period of limitation is founded on public policy, its aim being to secure the quiet of the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. The statute i.e. Limitation Act is founded on the most salutary principle of general and public policy and incorporates a principle of great benefit to the community. It has, with great propriety, been termed a statute of repose, peace and justice. The statute discourages litigation by burying in one common receptacle all the accumulations of past times which are unexplained and have not from lapse of time become inexplicable. It has been said by John Voet, with singular felicity, that controversies are limited to a fixed period of time, lest they should be immortal while men are mortal. (Also See *France B. Martins v. Mafalda Maria Teresa Rodrigues* (1999) 6 SCC 627.

8. Bar of limitation does not obstruct the execution. It bars the remedy. (See *V. Subba Rao and Ors. v. Secretary to Govt. Panchayat Raj and Rural Development, Govt. of A.P. and Ors.*: (1996) 7 SCC 626

9. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So, a life-span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). The idea is that every legal remedy must be kept alive for legislatively fixed period of time. (See N.

Balakrishanan v. M. Krishnamurthy: (1998) 7 SCC 123.”

17. I will now deal with the second contention raised by the petitioner. It has been stated that on 08.03.2010 a Zonal Development Plan was notified for the planning of Zone K-I being West Delhi-II. The said Zonal Development plan was approved on 08.03.2010 under Section 9(2) of the DDA Act. It also provides for regularisation of various institutions including educational institutions. The Zonal Development Plan notes that in the said zone there are privately owned educational institutions and there are 180 unauthorised colonies. Annexure 5 of the Plan also contains a list of applications of pre-existing institutions which includes the petitioner's school.

18. DDA has also filed its counter affidavit. DDA in the counter affidavit has confirmed about the Zonal Development Plan and has stated as follows:-

“Reply to Para:-3.31: That In reply to the said para it is submitted that the ZDP of Zone K-I (West Delhi-II) was approved by MoUD, G.O.I, on 08.03.2010 and authenticated by G.O.I. on 04.06.2010. The Institutes i.e. Shanti Gyan Niketan Sr. Sec. School, Shanti Gyan Niketan Jr. School and Shanti Gyan International School had applied for regularization within the stipulated time and have been listed in the Annexure-V at Sl. No. 7, 21 and 22 in the ZDP Report of Zone K-I.”

19. It may be noted that DDA Act, 1957 defines Zonal Development Plan. It states that simultaneously with preparation of the Master Plan under section 7 of the said Act, soon thereafter, the authority shall proceed with preparation of Zonal Development for each Zone. Section 29 of the said Act prescribes penalty for development of the land in contravention of the Zonal Development Plan. Section 30 of the said Act states that where any

development plan has been carried out in contravention of the Zonal Development Plan, an order for demolition can be passed. Similarly, section 31 of the said Act states that where any development plan has been commenced in contravention of the Zonal Development Plan, the authority can direct that development plan be discontinued. Other such consequences are stated in the DDA Act.

20. In view of the provisions of the Zonal Development Plan, it is quite clear that while the proceedings were pending before the concerned court of the Revenue Assistant, policy of the DDA changed and the Zonal Development Plan was issued. It is manifest that the land ceased to be an agriculture land. The provisions of the DLR Act cease to apply to the land in question.

21. In this context, reference may be had to the judgment of the Supreme Court in the case of *Harpal Singh v. Ashok Kumar*, (2018) 11 SCC 113, where the Supreme Court held as follows:

“5. Section 3(13) of the Delhi Land Reforms Act defines the expression “land” as follows:

“3(13) “land” except in section 23 and 24, means land held or occupied for purpose connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming and includes—

- (a) Building appurtenant thereto,
- (b) Village abadis,
- (c) Grovelands,
- (d) Lands for village pasture or land covered by water and used for growing singharas and other produce or land in the bed of a river and used for casual or occasional cultivation,

But does not include—

Land occupied by buildings in belts of areas adjacent to Delhi town and New Delhi town, which the Chief

Commissioner may by a notification in the Official Gazette declare as an acquisition thereto;”

The position of law which has been consistently followed is that there the land has not been used for any purpose contemplated under the Land Reforms Act and has been built upon, it would cease to be agricultural land. Once agriculture land loses its basic character and has been converted into authorised/unauthorised colonies by dividing it into plots, disputes of plot holders cannot be decided by the Revenue Authorities and would have to be resolved by the civil court. The bar under section 185 would not be attracted. This position of law has not been controverted in the present proceedings.”

In the above circumstances, keeping in view the above legal position, it is clear that DLR Act ceased to apply. In these circumstances, the proceedings initiated under section 81 of the DLR Act became illegal and the said officials became functus officio.

22. The Zonal Development Plan is a statutory document issued under the DDA Act. Merely because this aspect was not brought to the notice of the Court of Revenue Assistant or to the Deputy Commissioner or to the Financial Commissioner would not mean that the petitioner cannot take up the said plea before this court. The Zonal Development was formulated after initiation of these proceedings. The question raised being a pure question of law, the petitioner would be well within his rights to raise these issues.

23. Clearly, in view of the above, the proceedings initiated under section 81 of the DLR Act are barred by limitation. That apart the proceedings are also without jurisdiction. The order dated 17.07.2012 of the Court of Revenue Assistant (Najafgarh) and subsequent orders in appeal/revision are set aside.

24. Petition stands disposed of. Pending applications, if any, also stand disposed of.

JAYANT NATH, J.

AUGUST 28, 2019/rb/v
corrected & released on 17.09.2019

