IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: December 05, 2016
Judgment delivered on: May 15, 2017

+ W.P.(C) 10612/2016 & CM 41654/2016
+ W.P.(C) 10613/2016 & CM 41655/2016
+ W.P.(C) 10615/2016 & CM 41657/2016
+ W.P.(C) 10753/2016 & CM 42106/2016

NUR SINGH & ORS
LAL BACHAN SINGH CHAUHAN & ORS
MOHD NAFISH KHAN & ORS
MOHD NAFISH KHAN & ORS

..... Petitioners

Through: Mr. V.P. Rana & Mr. Gaurang Bindra, Advs.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Hem Kumar, Adv. for GNCTD with Mr. Vinod Kr. Pandey, Halka Patwari (in W.P.(C) Nos. 10612/2016 & 10613/2016)
Mr. Khalid Arshad, Adv. (in W.P.(C) Nos. 10615/2016 & 10753/2016)

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. These four writ petitions are being decided by this common order as they involve common issues with identical facts and the challenge is also to a common order passed by the learned Financial Commissioner.

2. The identical facts are, it is the case of the petitioners that they are the recorded Bhumidhars of subject land Khasra Nos. 100/17 (3-5), 100/24 (4-12), 100/25 (4-10), 100/17 (3-5), 100/16 (Min 2-5). It is their case that on a complaint made by one Mr. Haroon Khan, proceedings under Section 81 of the Delhi Land Reforms Act, 1954 ('DLR Act', in short), were initiated against them in respect of the above lands on March 31, 2014. A conditional order was passed by the Revenue Assistant on July 24, 2014 without giving a show cause notice and without providing opportunity of hearing and therefore, a revision petition was filed before the learned Financial Commissioner against the order of Revenue Assistant dated July 24, 2014. The learned Financial Commissioner vide order dated October 28, 2014, set aside the order dated July 24, 2014 and directed the Revenue Assistant to comply with the provisions of Rule 21-B of the DLR Rules, which provides for issuance of show cause notice and providing hearing, including procuring evidence. It is their case that the respondents wanted to demolish the property of the petitioners. The petitioners filed Writ Petition bearing No. 2820/2014 before this Court seeking a restraint order against the respondents from taking any action except in accordance with the law. The Writ Petition was disposed of by this Court on May 08, 2014, directing the respondents not to take any action except in accordance with the law. A reference is made by the petitioner to a PIL filed by Mr. Haroon Khan which was disposed of on September 03, 2014 by the Division Bench of this Court in view of the fact that proceedings under Section 81 of the DLR Act have been initiated.

3. Be that as it may, the case of the petitioners is also that, pursuant to the directions of the learned Financial Commissioner, in his order dated October 28, 2014, show cause notices were issued to the petitioners and in response to the show cause notices, detailed replies dated July 06, 2015 have been filed. The replies were filed during the proceedings before the Revenue Assistant on July 27, 2015, which were taken on record and direction was given to Gaon Sabha, the respondent No. 2 to file rejoinder. The Revenue Assistant passed another conditional order dated May 09, 2016. It is their case that this order dated May 09, 2016 does not mention about the replies filed by the petitioners on July 27, 2015, nor the said replies were considered; even the opportunity to lead evidence was not given to the petitioners. In other words, it is their case that the Revenue Assistant has not exercised the powers in accordance with the law, which resulted in the petitioners filing Revision Petition(s) under Section 187 of the DLR Act before the learned Financial Commissioner, the Revision Petitions being 202/2016, 205/2016, 203/2016 and 204/2016. The learned Financial Commissioner dismissed the revision petitions.

4. It is the submission of Mr. V.P.Rana, learned counsel for the petitioners in all these writ petitions that the Revenue Assistant and the learned Financial Commissioner, while passing the impugned orders dated May 09, 2016 and September 16, 2016 have failed to exercise their jurisdiction in accordance with the law so vested. He would state that it was the duty of the Revenue Assistant to consider the replies and to grant opportunity to lead evidence as per contentions raised in the replies, but the Revenue Assistant in its order

dated May 09, 2016, did not refer to the replies to show cause notices issued to the petitioners. According to him, the revisional jurisdiction of the learned Financial Commissioner was invoked only on the ground that the Revenue Assistant, be directed to consider the replies and to decide the proceedings under Section 81 of the DLR Act after hearing the petitioners and after granting opportunity to lead evidence. He has drawn my attention to Section 81 of the DLR Act and also the provisions of Rule 21-A and 21-B of the DLR Rules. He has also stated, the petitioners had taken the pleas of non-applicability of the DLR Act as the proceedings were barred by limitation and the petitioners are protected by the Delhi Special Laws, which are still in force. According to him, the pleas of the petitioners are supported by Law as Schedule-I, Entry 17, prescribes limitation for initiation of proceedings as three years and commence from the date of unlawful use of the land. His submission includes that the National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, 2014 says that Bill No. 88 of 2007 passed by the Parliament with regard to the protection of unauthorized construction, shall remain in force till December 31, 2017 and the National Capital Territory of Delhi Laws (Special Provisions) Second Bill, 2007, all those constructions which existed till June 01, 2014, will be protected which includes construction of agricultural land also. According to him, Rule 21-A mandates, Halka Patwari, shall in his report, give the date of conversion of land for non-agricultural purposes. Admittedly, report does not say so. So it becomes a disputed fact, whether initial report dated March 03, 2014 on the basis of which, proceedings under

Section 81 of the DLR Act were initiated, were barred by limitation or not. This fact has not been decided by the Revenue Assistant nor was considered. He also states, even the learned Financial Commissioner has failed on that count. It is also his submission that this Court cannot decide the disputed facts and the only issue whether the petitioners can be deprived of their rights with regard to their property in violation of Rule 21-A and 21-B of the DLR Rules, more particularly, when the proceedings initiated are hit by limitation. He would rely upon the following judgments in support of his contentions:

(a) 156 (2009) DLT 129 Neelima Gupta Vs. Yogesh Saroha and Others;

(b) 2004 (2) ILR (Delhi) 128, Gaon Sabha Samhalka v. R.N. Sahni;

(c) 167 (2010) DLT 368 Harijan Kalyan Samiti Regd. & Ors v. Govt. of NCT of Delhi & Ors;

(d) 204 (2013) DLT 269 Bijender Kr. Gupta v. Corporation Bank of India;

(e) (2010) 9 SCC 496 Kranti Associates Private Limited and Another v. Masood Ahmed Khan and others.

5. On the other hand, Mr. Khalid Arshad and Mr. Hem Kumar, learned counsel appearing for the respondents would make identical submissions inasmuch as the petitioners herein, bought the lands in question bearing Khasra Nos. 100/16, 100/17 from the erstwhile owner Sh. Rajpal Singh etc vide registered sale deed dated March 07, 2013 in favour of Nafish Khan and others and 100/24 and 100/25 in favour of Lal Bachan Chauhan and

Others, vide registered sale deed dated March 07, 2013, duly registered before the Sub-Registrar, Delhi after No-Objection Certificate from the office of ADM (Central), Delhi after due verification of the records that the lands are being used for agricultural purposes only and it is not notified for any acquisition proceedings. It is their case that from the recitals of the sale deeds, executed between the parties (erstwhile Bhumidhar and the petitioners), it is apparent that the lands were used for agricultural purposes by the erstwhile owners and the same is duly reflected in the revenue records i.e. Khasra Girdawries which shows the sowing of crop on the land in question upto the Kharif Crop for the year 2013. That, after the purchase of lands, the petitioners raised unauthorized constructions over the same and it was reported by Halka Patwari vide reports dated December 16, 2013, December 26, 2013 and March 03, 2014 that the petitioners are converting the lands in question from agricultural use to non-agricultural use. It is thereafter, the proceedings under Section 81 of the DLR Act have been initiated against the petitioners.

6. It is their submission that the respondents have demonstrated that unauthorized constructions have been made later than 2013 and also made as recently in 2014 till 2016. The reliance is placed on the judgment of this Court in the case of ***210 (2014) DLT 1 (DB) Randhir Singh Vs. Financial Commissioner***.

7. It is also their submission that the against the order of Revenue Assistant, an appeal lies to the Divisional Commissioner as per Schedule 1 Entry 17 Column 8 of the DLR Act. In other words, the revision petition under Section 187 of the DLR Act filed before the

learned Financial Commissioner was not maintainable since the petitioners have not exhausted the statutory remedy of filing appeals before the Divisional Commissioner. It is their submission that the jurisdiction could not have been foisted upon the learned Financial Commissioner by bypassing the scheme of the Act, by the mere filing of the revision petitions by the petitioners. He states, failure of the counsels of Gaon Sabha/Revenue Assistant to object to the maintainability of the revisions as well as the oversight of Financial Commissioner in this regard, does not make otherwise non-maintainable revision petitions, maintainable. That apart, it is their case, that the plea of limitation was not raised before the learned Financial Commissioner nor even before this Court and the same has been raised for the first time, before this Court, that to verbally. They also state, that a perusal of grounds B & C establish that the grounds revolve around the fulcrum that the Revenue Assistant and the learned Financial Commissioner while passing the impugned order(s) have not recorded that the replies have been considered. Apart from the allegation of non-consideration of replies, no other grievance has been raised. Hence, learned Financial Commissioner could not have adjudicated a question which was not pleaded nor urged before it. That apart, it is their submission that the petitioners have bought the lands on March 07, 2013 vide sale deeds and are claiming that construction on the lands exists beyond three years. As per para 2 of the petition, Section 81 proceedings were stated to have been initiated on March 31, 2014, as a sequitor to the petitioner's contention, March 31, 2011 would become the cut-off date for determining the limitation period qua the existence of construction. As per the respondents, construction has begun after the purchase of lands by the petitioners in 2013 and has continued through 2014-15 till 2016 and as such, the petitioner's contention of limitation of three years stands negated. They state, this is because the sale deeds of the year 2013 reveal that the lands are being used for agricultural purposes. On the aspect of unauthorized construction, they would rely upon the following:

i. Order dated 26.03.2014 in W.P.(C) 1973/2014 Haroon Khan vs. GNCTD by DB-1.

ii. Order dated 08.05.2014 in W.P.(C) 2820/2014 Md. Nafis Khan & Ors. v. GNCTD.

iii. Order dated 03.09.2014 in W.P.(C) 1973/2014 Haroon Khan v. GNCTD by DB-1.

iv. Pendency of W.P.9C) 3410/2016 Haroon Khan v. GNCTD before DB-1.

v. CM. No. 42676/2016 in W.P.(C) 3410/2016 Haroon Khan vs. GNCTD before DB-1 alleging fresh construction being done in 2016

vi. Khasra-Girdwari shows that till 2013 crops stood at the subject lands and that after that there are no crops (since there has been construction by the petitioner).

Vii. Report of Halka-Patwari of 16.12.2013, 26.12.2013 and 03.03.2014 and 06.02.2016 which reports of unauthorized construction activity being undertaken.

8. Alternatively, they have pleaded as Section 112 of the Limitation Act, the limitation period is of thirty years in respect of Government land and therefore, the period of three years prescribed by D.L.R. Act, cannot oust the period of limitation prescribed under the

Limitation Act. They would also that the DLR Act is a general law and the Limitation Act is a special law and the Limitation Act having been framed in the year 1963 whereas DLR Act was framed in 1954, the Legislature is presumed to have knowledge of the DLR Act, 1954 while passing the Limitation Act in 1963. In any case, it is their case that the DLR Act does not expressly exclude the provisions of the Limitation Act, 1963. The counsels would rely upon the following judgments, in support of the contentions and would seek the dismissal of the writ petition:

(i) 149(2008) DLT 146 (DB) Shammi Madan v. Gaon Sabha, Nangali;

(ii) 210 (2014) DLT 1 (DB) Randhir Singh v. Financial Commissioner;

(iii) AIR 1961 SC 1704 Navrattanmal v. State of Rajasthan;

(iv) 2010(4) SCALE 322 R. Hanumaiah v. Govt. of Karnataka.

9. Having heard the learned counsel for the parties, it is noted that the grounds on which challenge is made to the order of the learned Financial Commissioner is that the petitioners have been deprived of their rights qua their property without adhering to the provisions of Rules 21-A and 21-B of the DLR Rules and there is a failure of principles of natural justice as the pleas taken in the replies have not been taken into consideration.

10. Insofar as the first ground is concerned, Rules 21-A and 21-B of the DLR Rules stipulates as under:-

> *"21A Use of land for non-agricultural purposes (Section 81)- The Patwari, as soon as he learns that the provisions of Section 23 have been violated and any land has been used for non-agricultural purposes, submit report to the*

Tehsildar mentioning therein:-

(i) The name, parentage and address, of the Bhumidhar or Asami;

(ii) The number and area of the plots affected;

(iii) The name of the village and circle;

(iv) The use to which the land has been put;

(v) The date of conversion of land for non agricultural purposes; and

(vi) Approximate amount of expense involved in making land capable of use for agricultural purpose before.

On receipt of the report from the Patwari or on receipt of information otherwise, the Tehsildar shall cause summary enquiry about the nature of the conversion of land and the approximate of expense involved in making the land capable of use for agricultural purposes as before, if it is possible. He shall then submit the papers to the Revenue Assistant for orders.

21-B Disposal of reports by Revenue Assistant (Section 81)- The Revenue Assistant, on receipt of the report referred to in Rule 21-A or on receipt of information otherwise regarding user of land for non agricultural purposes shall issue notice to the parties in L.R. form 48 and shall call upon them to show cause why action should not be taken against them under Section 81.

To every such suit or proceedings Gaon Sabha shall be made a party.

After hearing the parties and after making such further enquiries as he thinks fit, the Revenue Assistant shall pass suitable orders thereon."

11. A perusal of the aforesaid Rules reveal that if a land is used for non agricultural purposes, the Patwari as soon as he learns that any land is put for non agriculture purpose, shall submit a report to the Tehsildar giving the details with regard to the name of the

Bhumidhar/Asami; the number and area of the plots effected; the name of the village and circle; the use to which land has been put; the date of conversion of land for non agricultural purposes etc. On the basis of the report of Patwari, the Tehsildar shall, after such inquiry place the papers with the Revenue Assistant, who on receipt of report under Rule 21-A of Patwari issue a show cause notice and after hearing the parties and after making such inquiries, the Revenue Assistant shall pass suitable orders.

12. Relying on the aforesaid Rules, the submission of Mr.Rana is that the RA was required to make inquiries about the factual pleas raised in the replies, which have not been considered. The pleas raised by the petitioners in the replies and contended by Mr. Rana are that the proceedings under Section 81 of the DLR Act were barred by limitation as according to him Schedule 1, Entry no. 17 prescribes a limitation of three years and the same commences from the date of unlawful use of the land. He also states, that the Halka-Patwari was required to give the date of conversion of the land for non agricultural purposes, which the report does not state so, as according to him it becomes a disputed fact whether the initial report dated March 3, 2014 on the basis of which the proceedings under Section 81 of the DLR Act were initiated were barred by limitation or not. That apart, it is the stand of the petitioners and also urged by Mr. Rana that in the replies the plea was also that in view of National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 and Amendment Act of 2014 protects all unauthorized construction, which existed till 2014 including on agricultural land.

13. The submission of Mr. Rana that the authorities below have failed to consider the replies filed by the petitioners while deciding the proceedings against the petitioners is appealing on a first blush but on a closer look, a question arises whether that should be a ground for this Court to set aside the impugned orders of the Authorities dated May 9, 2016 and September 6, 2016 of the Revenue Assistant and the learned Financial Commissioner respectively and remand the matters back to the Revenue Assistant. The answer is *"NO"* as I find that two issues raised in the replies can be decided on the basis of the pleadings/submission/record filed in these proceedings.

14. Insofar as the first submission of Mr. Rana as pleaded in the replies before the Revenue Assistant that the proceedings initiated under Section 81 of the DLR Act are barred by limitation is concerned, the issue needs to be seen from the perspective as to when did the petitioners bought the lands in question and what was the status of the lands at the time of purchase. There is no dispute with the regard to the fact, even noted by this Court in the earlier round of litigation that the lands were purchased by the petitioners vide Sale Deeds dated March 06/07, 2013. Surprisingly, this aspect has not been averred by the petitioners in the petitions nor the copies of the Sale Deeds have been placed on record. It is the stand of the respondents that the Sale Deeds were registered after issuance of No Objection Certificate from the office of ADM(Central) Delhi after due verification of the records that the land is being used for agricultural purposes only and it is not notified for any acquisition proceedings. So issue of limitation needs to be decided on a premise that the

petitioners have purchased lands, which were being used for agricultural purposes in the year 2013. It is an admitted position of the petitioners that the proceedings under Section 81 of the DLR Act were initiated on March 31, 2014. It is the case of the respondents that the Halka-Patwari has submitted his reports on December 16, 2013, December 26, 2013 and March 3, 2014 that the petitioners are converting the lands in question from agricultural use to non agricultural use.

15. The plea of Mr. Rana that the Halka-Patwari in his report dated March 03, 2014 on the basis of the proceeding initiated under Section 81 of the DLR Act, does not specify the date on which the land was converted for non agricultural purposes, as according to him, such date would be relevant to determine the aspect of limitation. In other words, if the conversion of the land to non-agricultural purpose was before a period of three years from the date of initiation of proceedings (March 31, 2014) then the limitation in terms of Schedule-I, Entry No.17 would come into play. I am afraid, in view of the stand of the respondents that the land having been purchased on March 07, 2013 through sale deeds, which have not been placed on record by the petitioners, which would have shown the nature/usage of the lands purchased, moreover, the stand of the respondents that the Sale Deeds were registered before the Sub-Registrar, Delhi after the issuance of No Objection Certificate from the office of ADM (Central) after due verification of the record that the land is being used for agricultural purpose only surely suggest that on the date of the Sale Deeds i.e March 07, 2013, the lands were not converted from agricultural use to non-

agricultural use. So, the plea of Mr.Rana that the proceedings were barred by limitation has to be rejected.

16. The reliance placed by Mr.Rana on the judgment of this Court in the case of ***Gaon Sabha Samalkha (supra)***, wherein this Court has held that the period of limitation prescribed by Entry 17 in the First Schedule of DLR Act is the actual date of unlawful use of land and not the date of knowledge shall have no applicability in the facts of this case and in view of my finding above.

17. Insofar as the second submission of Mr. Rana that in view of the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 as amended in 2014, the proceedings under Section 81 of the DLR Act cannot be initiated is concerned, having seen the provisions of the Act of 2011 (and of 2014), it is clear the same has been enacted for providing temporary relief and to minimize avoidable hardship and irreparable loss to the people of National Capital Territory of Delhi against any action by the concerned Agency in respect of persons covered by the Policies as referred in the said Act. Some of the Policies referred to in the said Act, includes the following:-

i. The policy finalized by the Central Government regarding regularization of unauthorized colonies, village abadi area and its extention, the guidelines and regulations for this purpose have been issued;

ii. In pursuance of the guidelines and regulations necessary steps are being taken for regularization of unauthorized colonies which, inter alia, involve scrutiny of layout plans, assessment of built up percentage existed as on the 31st day of March, 2002, identification *of mixed use of streets, approval of layout plans, fixation of boundaries, change in land use and identification of colonies not eligible for regularization;*

iii. The draft policy regarding farm houses is under consideration in the Delhi Development Authority;

iv. The policy with respect to storages, warehouses and godowns used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land are under consideration of the Central Government in consultation with the Delhi Development Authority.

18. Suffice to state, it is not the case of the petitioners that the lands in question are covered under the above mentioned Policies. If that be so, the provisions of the Act of 2011 as amended in 2014, have no application to the petitioners.

19. The reliance placed by Mr.Rana on the judgment in the case of ***Neelima Gupta (supra)*** to inter-alia contend that once agricultural land is converted into unauthorized colony then the Revenue Authorities shall not have any jurisdiction, even though, such a plea is contrary to the earlier plea of the petitioners that the proceedings are barred by limitation (which plea pre-supposes the applicability of DLR Act) still it is not the case of the petitioners in the pleadings that the dispute raised by them is with regard to the unauthorized colony over agricultural land. This judgment has no application in the facts of this case.

20. Insofar as the judgment of ***Harijan Kalyan Samiti Regd. (supra)*** is concerned, the facts of the said case are that the petition was filed by the residents of Harijan Basti of Jharoda Mazra in Burari for quashing notice dated July 17, 2008 by the Secretary, Ministry

of Urban Development, Govt. of NCT of Delhi directing removal of all encroachments on the land failing which the encroachments would be demolished. This Court disposed off the writ petition by directing till a decision is taken on the applications made by the petitioners for regularization of the unauthorized colonies in question, the respondents are restrained from disturbing the possession of the petitioners. It is not such a case in these petitions, inasmuch as the petitioners have not pleaded that there are part of an unauthorized colony and they have made applications for regularization.

21. Insofar as the judgment in the case of ***Bijender Kr. Gupta (supra)*** is concerned, the said judgment has no applicability in the facts of this case, moreover, the issue in hand is relatable to the provisions of the DLR Act and the issue needs to be seen from the perspective of DLR Act, which includes Section 81, which clearly stipulates ejectment for use of land in contravention of provisions of the Act.

22. Insofar the judgment in the case of ***Kranti Associates Private Limited(supra)*** relied upon by Mr. Rana to contend that the order passed by a judicial authority affecting the rights of the parties must speak and where the order is subject to appeal, the necessity to record reasons is even greater, in order to prevent unfairness and arbitrariness in reaching the conclusion. There is no dispute on the proposition of law as laid down by the Supreme Court in the said judgment. Without going into the question whether the proceedings before the learned Financial Commissioner were maintainable as contended by the learned counsel for the respondents, this Court is of the view that in view of the aforesaid

discussion, the petitioners are not entitled to the reliefs as claimed in these petitions. The same are dismissed.

<u>CM 41654/2016 (for stay) in W.P.(C) 10612/2016</u>
<u>CM 41655/2016 (for stay) in W.P.(C) 10613/2016</u>
<u>CM 41657/2016 (for stay) in W.P.(C) 10615/2016</u>
<u>CM 42106/2016 (for stay) in W.P.(C) 10753/2016</u>

Dismissed as infructuous.

V. KAMESWAR RAO, J

MAY 15, 2017
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