

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: March 28, 2017
Judgment delivered on: September 15, 2017

+ W.P. (C) 11732/2015 & CM. No. 31249/2015

M/S HYACINTH ESTATE PVT. LTD.

..... Petitioner

Through: Mr. Sudheer Nandrajog, Sr. Adv.
with Mr. Pankaj Vivek and Ms.
Anupriya Singh, Advs.

versus

GAON SABHA RAGHOPUR

..... Respondent

Through: Mr. Devesh Singh, ASC (Civil) with
Mr. Vinod Kr. Bhati, Adv.

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present writ petition has been filed challenging the order dated September 24, 2015 passed by the learned Financial Commissioner in Revision Petition No. 262/2015 whereby the learned Financial Commissioner has dismissed the Revision Petition upholding the order dated July 24, 2015 passed by the Dy. Commissioner/Collector (South-West) in an Appeal filed by the petitioner herein against the order dated May 27, 2015 of SDM/RA, Kapashera.

2. Some of the facts are, it is the case of the petitioner that the petitioner being the owner of land bearing Khasra No. 20/1/1/3, 9/2, 10/1, 10/2 and 12/1 total measuring about 12 bighas and 12 biswa situated in the Revenue Estate of village Raghopur, Delhi, erected a boundary wall and two rooms for chowkidar and agricultural labour. On June

23, 2012, Halka Patwari made a report alleging non agricultural use of the land, which resulted in Case No. RA/134/2012 titled Gaon Sabha, Raghopur v. Hyacinth Estate Pvt. Ltd having been initiated under Section 81 of the Delhi Land Reforms Act, 1954 (DLR Act in short). Notice was served upon the petitioner on May 18, 2013. On June 5, 2013, written statement was filed by the petitioner. It is the case of the petitioner that it had taken objection that the notice served was a simple notice to appear, whereas the DLR Act requires, a notice in LR Form No. 48 be served before initiating proceedings under Section 81 of the DLR Act. It is the case of the petitioner that it had, in its written statement has stated that the suit land was being continuously used for agricultural purposes and filed khasra Girdawari of the year 2011-2012 showing cultivation. It was further pleaded that the land had a boundary wall and two small rooms. One room was near the gate for the chowkidar and the other room was a small labour hut/tube well room. It was pleaded that the rooms were an improvement to the holding and the same were built over a miniscule portion of land measuring about 2 biswa out of total land measuring more than 2.5 acres and the entire remaining land was being used for agricultural purposes.

3. It is the case of the petitioner that on February 19, 2014 and March 10, 2014, land was inspected by Halka Patwari wherein in the report, it was stated that the crop is being sown in the land. It is the case of the petitioner, despite the report, the proceedings still continued. The petitioner has stated that on April 30, 2014 the learned RA/SDM suggested to the petitioner that the height of boundary wall was about 7 feet and the violation thereof can be cured. On August 01, 2014, upon instructions, the counsel for

the petitioner gave a statement agreed to reduce the height of boundary wall to 4.5 feet, to which the counsel appearing for the Gaon Sabha also gave no objection. Accordingly, the petitioner reduced the height of boundary wall to 4.5 feet. On August 25, 2014, the petitioner filed photographs with regard to reduced height of the wall. It is the case of the petitioner that upon being satisfied that there exist no violation, the case was reserved for passing of orders as the only alleged violation was cured. However, before the orders could be passed, the concerned RA/SDM was transferred and a new Officer took over. It is stated that when the case came up before learned RA/SDM on May 27, 2015 it was ordered that a fresh status report may be called from Halka Patwari about the permanent structures on the site and about the height of boundary wall but the learned RA/SDM went on to direct, as the conditional order has not been issued, a conditional order be issued. A conditional order was passed on the same day i.e May 27, 2015 wherein, it was held that the land is being used for non agricultural purposes, which contravene the provisions of Section 81 of the DLR Act. The petitioner was called upon to convert the land into agricultural use/purpose within three months from the date of the order. It is the case of the petitioner that this order was passed ignoring khasra girdawari of the year 2014-15.

4. Aggrieved by the order, the petitioner filed an Appeal under Section 185 (3) of the DLR Act being Appeal No. 35/2015 before the Deputy Commissioner (South-West), Kapashera, Delhi. The Deputy Commissioner held that the order dated May 27, 2015 is a conditional order passed by the learned RA/SDM, Kapashera. The Appeal came up for hearing on July 24, 2015, when the learned Deputy Commissioner

dismissed the Appeal by holding that the order dated May 27, 2015 is only a conditional order and as per the provisions of Section 185(3) of the DLR Act, only final orders are appealable, as defined in Schedule-I of the Act. The order dated July 24, 2015 was taken in revision by the petitioner before the learned Financial Commissioner, the Revision Petition being No. 262/2015. The said Revision Petition came up for hearing on September 24, 2015. The learned Financial Commissioner agreeing with the Deputy Commissioner, dismissed the Revision Petition.

5. It is the submission of Mr. Sudhir Nandrajog, learned Senior Counsel for the petitioner, the learned Deputy Commissioner has erred in dismissing the appeal filed by the petitioner under Section 185(3) of the DLR Act on the ground that the order dated May 27, 2015 is a conditional order, by contending that the said order is a final order, as it conclusively held that the petitioner is using the suit land for non agricultural purposes. It is based on such a finding, the learned RA/SDM granted time of three months to the petitioner to convert it for the agricultural use. If the petitioner is aggrieved by the said finding of the learned RA/SDM that the land is being used for non agricultural purposes, the remedy for the petitioner is only under Section 185 (3) of the DLR Act read with Schedule-I. He states that the learned Deputy Commissioner has failed to appreciate that the order under Section 81 could only be for vesting of the land and it is only under Section 82(2) of the DLR Act, which provides that if the land is reconverted then the decree passed under Section 81 may not be enforced and thus, when the order dated May 27, 2015 directs the petitioner to reconvert the land or to suffer vesting of the land then in effect, it is a final order under Section 81 of the DLR

Act. Mr. Nandrajog states that the learned Deputy Commissioner has failed to appreciate that the petitioner cannot do any more act or thing in his power or authority to comply with the conditional order dated May 27, 2015 as the land is already used for agricultural purposes and there is no violation, which needs to be cured. Therefore, there was no cause or reason for continuance of proceedings under Section 81 of the DLR Act. According to him, even the learned Financial Commissioner has failed to appreciate that the learned Deputy Commissioner has not considered the provisions of Section 185(3) of the DLR Act in proper perspective by rejecting the Revision Petition filed by the petitioner. In other words, it is his submission that the learned Financial Commissioner has failed to appreciate that the Deputy Commissioner has not exercised the jurisdiction, which is vested in him by rejecting the Appeal.

6. It is the submission of Mr. Nandrajog that even if any violation is there, the same was pertaining to the wall constructed by the petitioner, whose height has now been reduced to 4.5 feet and which aspect has not been objected to by the counsel appearing for the Gaon Sabha before the learned RA/SDM. The construction of the wall and the two rooms are meant for improvement of holding and not illegal use for non agricultural purposes including colonization of land. He would rely upon the following judgments in support of his contentions:-

- (i) ***JJV marketing Pvt. Ltd v. Financial Commissioner W.P.(C) No. 6143/1998;***
- (ii) ***Bihar Lal v. Union of India AIR 1974 Delhi 84;***
- (iii) ***S. Satnam Singh v. Surender kaur (2009) 2 SCC 562;***
- (iv) ***Mool Chand v. Dy. Director (1995) 5 SCC 631;***
- (v) ***Shah Babulal Khimji v. Jayaben D. Kania & Anr. (1981) 4 SCC 8;***

7. On the other hand, Mr. Devesh Singh, learned counsel appearing for the

respondent would justify the orders passed by the Deputy Commissioner and the learned Financial Commissioner stating that the Appeal filed by the petitioner under Section 185 (3) of the DLR Act was not maintainable as the order dated May 27, 2015 was not a final order but a conditional order calling upon the petitioner to convert the land for agricultural purposes. He states, being a conditional order, the remedy for the petitioner was not under Section 185(3) of the DLR Act.

8. Having heard the learned counsel for the parties, the only issue, which arises for consideration is, whether the Dy. Commissioner was justified in holding the appeal filed by the petitioner under Section 185 (3) of the DLR Act, is not maintainable as the order dated May 27, 2015 was a conditional order and not a final order, which is only appealable. For answering this issue, it is necessary to reproduce Sections 81, 82, 185 and Sl. No. 17 of the Schedule I of the Act:-

“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 land holder, 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 [(Note: Substituted by Act 38 of 1965 for "damage") 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"].

82. Decree for ejectment under section 81. - (1) A decree for ejectment under Section 81 may direct the ejectment of Bhumidhar or Asami from the whole or part of the holding as the Court, having regard to the circumstances of the case, may direct.

(2) The decree shall further direct that, if the Bhumidhar or Asami repairs the damage within three months next after the decree, the same shall not be executed except in respect of costs.

185. Cognizance of suits, etc, under this Act. - (1) Except as provided by or under this Act no court other than a court mentioned in column 7 of Schedule I shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, take cognizance of any suit, application, or proceedings mentioned in column 3 thereof.

(2) Except as hereinafter provided no appeal shall lie from an order passed under any of the proceedings mentioned in column 3 of the Schedule aforesaid.

(3) An appeal shall lie from the final order passed by a court mentioned in column 3 to the court or authority mentioned in column 8 thereof.

(4) A second appeal shall lie from the final order passed in an appeal under sub section (3) to the authority, if any, mentioned against it in column 9 of the Schedule aforesaid.

Sl. No.	Section of the Act	Description of suit application and other proceedings	Period of Limitation	Time from which period begins	Proper Court fees	Court of original jurisdiction	Court of 1 st Appeal	2 nd Appeal
17.	81	(i) Suit for ejectment of Bhumidhar or Asami and for damages under sub-section(1)	Three years	From the date of unlawful use of the land	As in the Court Fees Act, 1870	Revenue Assistant	Deputy Commissioner	..
		(ii) Proceedings	Three years	-do-	Nil	-do-	-do-	..

		under sub- Section (2)	or one year from the date of passing of the Delhi Land Reforms (Amendment) Act, 1965, whichever period expires later.					
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9. That apart, I also reproduce the order dated May 27, 2015 of the RA/SDM, Kapashera and order dated July 24, 2015 of the Deputy Commissioner.

“Case No. 134/2012

Under Section 81

Case Title: G.s. Raghobpur v. High Sinth Estate Pvt. Ltd.

Conditional Order U/S 81 of the DLR Act

A report dated 23/6/2012 has been received from the Halka Patwari thorough Tehsildar Kapashera against the above mentioned respondents for the land bearing khasra No. 20/1/1/3, 6/2, 10/1, 10/2 and 12/1 situated in revenue estate of village Rathopur. The Halka Patwari has reported vide his report that land is being used for non-agricultural purpose thereby contravened the provisions of Section 81 of the DLR Act. Restraining Order was passed on 7/9/2012 in the matter and notice; L.R. issued to respondent & served.

*It is therefore ordered that the said land be converted back into agricultural use/purpose within **THREE MONTHS** from the date of this order and respondent will appraise this Court about the same, failing which the suit land shall be vested in Gaon Sabha. Further respondent is restrained from making any other construction which instead of putting it back to agriculture use is an effort towards putting the land to further non-agriculture use. Halka Patwari is hereby directed to submit land use report after three months of issue of this order.*

Harleen Kaur(IAS)

SDM (Kapashera)”

“ 24/07/2015

Adv. Pankaj Vivek appeared for the appellant. The impugned order is the ‘Conditional Order’ dated 27/05/2015 passed by SDM/RA (Kapashera). It is seen from the provisions of Section 185 (3) of the DLR Act, 1954 that only final orders are appealable, as defined in Schedule I of the Act. This order being conditional cannot be accepted as a final order, though the counsel strongly argues that it is the nature of a final order only. Hence, the remedy would not lie before this Court. The appeal is therefore dismissed, being non-maintainable.

Sd/-

24/07/2015”

10. From a reading of order dated May 27, 2015, it is clear that the RA/SDM, on a finding that the land is being used for non-agricultural purpose by the petitioner and thereby contravened Section 81 of the DLR Act, had called upon the petitioner to convert the said land into agricultural use/purpose within three months.

11. On a perusal of Section 81 of the DLR Act, it is seen that it relates to (i) a suit filed by Gaon Sabha or a land owner for ejectment of a bhumidhar or an asami if the land is being used for non agricultural purpose and for damages equivalent to the cost of works, which may be required to render the land capable of use for agricultural purpose; (ii) the action of the Revenue Assistant for ejectment and damages on information received or on his own motion.

12. There cannot be any dispute that the proceedings under Section 81 are for both ejectment and damages. The Revenue Assistant/SDM has not passed an order for damages. He by passing a conditional order, has given time to the petitioner to convert

the land back to agricultural use without determining the damages. It is on failure on the part of the petitioner to put the land in agricultural use, an order of damages is passed, which is a final order, which can be challenged by a party under Section 185(3) read with Entry 17 in Schedule I. If the plea of Mr. Nandrajog is to be accepted, then it would mean two appeals can be filed; one against a conditional order and later against a final order, which would determine the damages/cost. Such a recourse is not contemplated under Section 185 (3) of the DLR Act, inasmuch as it stipulates that an appeal shall lie from the final order passed by a Court mentioned in Column 3 to the Court or authority mentioned in column 8. Column 3 of Entry 17 of Schedule I of the DLR Act contemplates the description of suit application and other proceedings to mean (i) a suit for ejectment of bhumidhar or asami and for damages under sub section (1); (ii) proceedings under sub section (2). So it necessarily means the order must relate to both ejectment and damages (cost). In this regard, it is also necessary to refer to Rule 24 of the Delhi Land Reforms Rules, 1954, which stipulates as under:-

“24. First appeals-Unless an order is expressly made final by the Revenue law for the time being in force, an appeal shall lie to the Court authorized under paragraph 23 to hear the same from every original order passed in any proceedings held under the provisions of the Act.”

13. The aforesaid also makes it clear that it is the final order from which an appeal shall lie to the Court authorized under paragraph 23, in this case the Deputy Commissioner.

14. Insofar as the submission of Mr. Nandrajog that in view of Section 3(4) of the DLR Act, which defines decree as found mentioned in the CPC shall include, a

preliminary decree as well and as such, an appeal shall lie on a finding of the RA/SDM that the petitioner has put the land for non agricultural use, is not appealing in view of the specific provision of Section 185(3) read with Entry No. 17 Schedule I of the DLR Act and Rule 24 of the Delhi Land Reforms Rules, 1954. The reliance placed by him on the judgment of the Supreme Court in the case of *S. Satnam Singh (supra)*, in support of his contention is liable to be rejected.

15. Similarly, the judgment relied upon by Mr. Nandrajog in the case of *Mool Chand (supra)*, to contend that if the petitioner does not challenge the preliminary decree then the same would become final, is also without merit for the reasons already stated above. It goes without saying that the petitioner would be within its right to challenge even the findings in the conditional order after a final order is passed by the Revenue Assistant/SDM.

16. Similarly, the reliance placed by Mr. Nandrajog on the judgment of the Supreme Court in the case of *Shah Babulal Khimji (supra)*, would have no applicability in view of my conclusion above. In fact, the judgment of this Court in the case of *JJV marketing Pvt. Ltd (supra)*, as referred to by Mr. Nandrajog, in para 6, wherein this Court has held as under, would be relevant to hold where there is a conditional order granting three month's time to reconvert the land to agricultural use, is not a final order.

“6. Needless to state, under Section 81 of the Delhi Land Reforms Act if agricultural land is put to a non-agricultural use, a notice has to be served upon the bhumidar and if finding, after notice and hearing the bhumidar, is that land is being put to a non-agricultural use, 3 months' time has to be granted to reconvert the land to agricultural use. Second stage proceedings are held after 3 months. If it is noted that land has not been

reconverted to agricultural use the same has to be vested in the Gram Sabha.”

17. Insofar as the submission of Mr. Nandrajog that order under Section 81 could only be for vesting of the land, when the order dated May 27, 2015 directs the petitioner to reconvert the land or to suffer vesting of the land then in effect, is a final order under Section 81 of the DLR Act is concerned, the same is also without any merit in view of my conclusion above, that proceedings under Section 81, would include a suit for ejectment and for damages.

18. Similarly, under Section 81(2), the Revenut Assistant on receiving information or on his own motion, eject the bhumidhar and also recover damages. In other words, the suit under Section 81 is not exclusively for ejectment. In view of my discussion above, the appeal filed by the petitioner before the Deputy Commissioner was not maintainable under Section 185(3) of the DLR Act. There is no infirmity in the orders of the learned Financial Commissioner and also the learned Deputy Commissioner. The writ petition is dismissed. No costs.

CM. No. 31249/2015 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

SEPTEMBER 15, 2017

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