

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

% **Date of decision: 20th September, 2018**

+ **LA.APP. No.112/2016**

SMT. PREM LATA GUPTA

.... Appellant

Through: Mr. L.B. Rai, Adv.

Versus

GAON SABHA, MUNDKA & ANR.

.....Respondents

Through: Mr. Raghvendra Pandey, Adv. for R-1.
Mr. Yeeshu Jain & Ms. Jyoti Tyagi,
Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This appeal under Section 54 of the Land Acquisition Act, 1894 impugns the judgment [dated 1st December, 2015 in LAC No.3A/11 (Unique Case ID No.02401C021799011) of the Court of Additional District Judge (ADJ)-02, West] on a reference under Section 30-31 of the Act, apportioning the compensation in respect of land measuring 1 bigha 4 biswas in Khasra No.55/19 Min of village Mundka between the appellant and the respondent no.1 Gaon Sabha, Mundka village in the ratio of 20:80 i.e. 20% to the appellant and 80% to the respondent no.1.

2. The appeal came up before this Court first on 10th May, 2016 when notice thereof was ordered to be issued and the Trial Court record requisitioned. Vide subsequent order dated 8th July, 2016, no objection of the appellant to the respondent No.1 receiving compensation in terms of the impugned judgment and decree was recorded. Counter affidavit to the appeal has been filed by the counsel for the respondent no.1. The appeal

thereafter has been adjourned from time to time. The counsel for the appellant has also filed written arguments.

3. Yesterday i.e. 19th September, 2018, the counsel for the appellant was heard; however since the counsel for the respondent no.1 was not available, the hearing was adjourned to today. The counsel for the respondent no.1 has been heard today and the counsel for the appellant has been heard in rejoinder and the records perused.

4. On receipt of Reference, on account of “ownership dispute”, along with cheque for Rs.6,28,836/-, notice thereof was issued by the ADJ to the appellant and the respondent no.1 and the cheque ordered to be encashed and amount thereof kept in fixed deposit. The respondent no.1 made a claim before the ADJ pleading that (i) the respondent no.1 was the bhumidhar in possession of the land; (ii) the said land vested in the respondent no.1 vide orders / proceedings of the concerned Sub-Divisional Magistrate (SDM), on finding violation of Section 81 of the Delhi Land Reforms Act, 1954 (Reforms Act) and the land in question, was being used by the respondent No.1 Gaon Sabha after vesting in the Gaon Sabha, and no other person had any right, title or interest therein ; (iii) the possession of the land had been taken over from the respondent No.1 Gaon Sabha on acquisition of the same; and, (iv) the respondent no.1 was the rightful claimant to the compensation.

5. The appellant filed a reply to the aforesaid claim of the respondent no.1, disputing that the respondent no.1 was ever in possession of the land and claiming, (a) that the appellant had purchased the subject land vide registered Sale Deed dated 1st February, 1995 from one Dalbir Singh and thereafter mutation was also sanctioned in favour of the appellant in the

revenue records; (b) the appellant remained in possession of the land till acquisition thereof; (c) the appellant alone is entitled to compensation with respect thereto; and, (d) the averments of proceedings pleaded by the respondent no.1 Gaon Sabha, under Section 81 of the Reforms Act, were vague and without any particulars. The appellant also filed her own claim petition pleading the same facts. In the claim petition however, it was further pleaded that the appellant, upon coming to know of the compensation being assessed in the name of respondent No.1, had approached the authorities and contended that the land had been wrongly vested in the Gaon Sabha on the basis of vague proceedings under Section 81 of the Reforms Act and on account of which wrong vesting, the revenue entries stood in the name of the respondent no.1 and a reference on account of ownership dispute had been made. It was also pleaded, that mutation does not confer any title on the respondent No.1 Gaon Sabha and it was the appellant who was the owner by virtue of registered Sale Deed.

6. The appellant, in support of her claim filed her affidavit by way of examination-in-chief, proving the sale deed in her favour as Ex.IP2W1/1 and the Khatoni sanctioning mutation in her favour as Ex.IP2W1/2 and deposed that (i) the proceedings under Section 81 of the Reforms Act were wrongly initiated; (ii) the respondent no.1 never took possession of the land, neither from the appellant nor from the earlier owner of the land; (iii) the appellant was in continuous possession of the land; (iv) mutation in favour of the respondent no.1 did not confer any title on the respondent no.1; (v) the proceedings under Section 81 of the Reforms Act do not culminate till the possession of the land is taken over and in the present case possession

remained with the appellant. The appellant, in cross-examination admitted that as per Khatoni Ex.IP2W-1/D1, respondent No.1 Gaon Sabha was shown as the bhumidhar of the land in question. The respondent no.1 Gaon Sabha did not lead any evidence.

7. The learned ADJ answered the Reference, as aforesaid holding the appellant to be entitled to 20% of the compensation and the respondent no.1 to be entitled to 80% of the compensation, reasoning (i) that it was the admitted case that respondent no.1 Gaon Sabha, as per Ex.IP2W1/D1 was the recorded bhumidhar; (ii) possession pursuant to acquisition was taken on 18th January, 2008 from the respondent no.1 Gaon Sabha; (iii) it had also not been challenged that the land vested in respondent no.1 Gaon Sabha under Section 81 of the Reforms Act; (iv) though the appellant had proved the sale deed in her favour, but there was no document on record showing that the Dalbir Singh, from whom the appellant purchased the property, was the recorded owner of the land; (v) though in the sale deed it was mentioned that No Objection Certificate had been obtained from Tehsildar but no such certificate also was produced; (vi) Ex.IP2W1/2 proved by the appellant pertained to the year 1995 only and no revenue record pertaining to the years 2000, 2001 or 2002 showing the appellant as recorded owner of the property had been produced; (vii) *M/s Ahad Brothers Vs. State of M.P.* AIR 2005 SC 355, judgment of this Court in RFA No.352/1981 and RFA No.353/1981 titled *Rama Shankar Vs. Mukhtiare* and *Hardwari Lal Vs. Rai Singh* (2009) 107 DRJ 39 (DB) cited by the counsel for the appellant, were distinguishable on facts; (viii) the appellant had failed to prove any document or proceeding declaring her as bhumidhar of the land; (ix) **Gaon**

Sabha Kakrola Vs. Ram Karan 131 (2006) DLT 732 and *Suraj Bhan Vs. Financial Commissioner* (2007) SCC 186 also cited by the counsel for the appellant were distinguishable on facts; and, (x) the appellant, who though purchased the land but could not prove the ownership and possession thereof, was however entitled to compensation to the extent of 20%.

8. The respondent no.1 has not preferred any appeal or cross-objection to 20% of compensation awarded to the appellant.

9. The counsel for the appellant has argued, that (i) Section 4 notification was issued on 7th June, 2007; (ii) award was made on 1st January, 2008 and possession of the land was taken on 18th January, 2008; (iii) no proceedings under Section 81 or decree under Section 82 of the Reforms Act were proved; (iv) no notice, if any issued of the said proceedings was produced; (v) though ordinarily the courts, in such cases grant 60% of compensation to the owner and only 40% to Gaon Sabha, but in the present case the appellant, despite being the owner, has been awarded only 20% of compensation; and, (vi) though this Court also had called for the records of Section 81 of the Reforms Act proceedings, but the same have not been produced.

10. In the written arguments filed by the appellant, it is contended that (a) the learned ADJ solely and wrongly relied upon the Khatoni, for holding the respondent no.1 Gaon Sabha to be the bhumidhar, without realizing that no proof of proceedings if any initiated under Section 81 of the Reforms Act or of the decree if any passed therein under Section 82 of the Reforms Act was proved; (b) mere entries in the revenue record do not confer any title and there is no presumption of correctness thereof; (c) the Land Acquisition Act, 1894 only recognizes possession and the learned ADJ did not consider that

the respondent no.1 Gaon Sabha had never come into possession of the land and was never in possession thereof; and, (d) the appellant was in cultivatory possession of the land till the date of acquisition thereof. Reliance again is placed on the same judgments which were cited before the learned ADJ, though without referring to them during the hearing.

11. However, I find on the case file, copies of the following judgments filed by the counsel for the appellant (i) ***Raj Singh Vs. Union of India*** 162 (2009) DLT 103 (DB) apportioning the compensation between persons showing cultivatory possession on the date of acquisition and Gaon Sabha shown as bhumidhar in the revenue record, in the ratio of 60:40 respectively, reasoning that it was difficult to conclude that the persons showing cultivatory possession had acquired bhumidhari rights; and, (ii) ***Ratan Singh Vs. Union of India*** 51 (1993) DLT 7 (DB) apportioning compensation between old tenants on the government land and the government in the ratio of 80% and 20% respectively.

12. The counsel for the appellant, in rejoinder also handed over copy of judgment dated 9th August, 2016 of the ADJ-02, West in LAC No.13A/12 titled ***Union of India Vs. Gram Sabha, Mundka*** awarding the entire compensation to the person holding the sale deed with respect to the land and not awarding any part of compensation to Gaon Sabha, in whose name the land stood in the revenue records, reasoning that unless Gaon Sabha proves that in pursuance to the alleged proceedings under Section 81 of the Reforms Act, possession was taken, it was not entitled to any part of the compensation.

13. The counsel for the respondent no.1 has not addressed any arguments.

14. I have considered the controversy.

15. The appellant, not only in the memorandum of parties in this appeal, but elsewhere also in the entire record including the requisitioned record, is described as “wife of Ved Prakash, resident of Naginchi Scheme, Pawan Puri, Bikaner, Rajasthan”. The appellant, neither in her claim petition nor in her evidence disclosed, how inspite of being a resident of Rajasthan, she was in cultivatory possession of the subject land at Delhi. It is not the case of the appellant that she was getting the land cultivated from another on her behalf. In fact, there is no explanation whatsoever as to how the appellant was in cultivatory possession. The appellant has thus totally failed to make even a semblance of a case, of being in cultivatory possession.

16. There is also no revenue record, of the appellant having at any time since the year 1995, cultivated the land, as there should have been in existence in the Khasra Girdawari. The only inference is that the appellant was neither de facto nor de jure in possession of the land.

17. As far as the controversy with respect to the proceedings under Section 81 of the Reforms Act is concerned, as would be obvious from the narration hereinabove of the pleadings and evidence, the appellant in fact admitted the said proceedings by pleading and deposing that the said proceedings were wrongful and by representing to the authorities of the proceedings being wrongful. Once the appellant had admitted so, it is not open to the appellant to contend that there were no proceedings under Section 81 of the Reforms Act.

18. Same is the position with respect to the recording of the respondent no.1 as bhumidhar with respect to the subject land. There is an admission, as would be evident from the narration above, of the same also. Rather, it is the plea and the evidence of the appellant that the appellant, on coming to know of the same, protested thereagainst also.

19. Not only so, such facts also show the disconnect of the appellant from the subject land and which again establishes that the appellant was de facto also not in possession of the land.

20. Once it is so, the law with respect to open land is that possession follows title. Reference if any required in this regard can also be made to *Anathula Sudhakar Vs. P. Buchi Reddy* (2008) 4 SCC 594, *Sarvasachi K. Sahai Vs. Union of India* (2017) SCC OnLine Del 8818 (DB), *Pankaj Bajaj Vs. Meenakshi Sharma* 2013 SCC OnLine Del 2303, *Institute of Human Behaviour & Allied Sciences Vs. Govt. of NCT of Delhi* (2012) ILR III Delhi 247, *S.S.P. Buildcon P. Ltd. Vs. M.C.D.* 2010 (119) DRJ 57, *Ishmal Devi Vs. Delhi Development Authority* 2009 SCC OnLine Del 2550 and *Navalram Laxmidas Devmurari Vs. Vijayben Jayvantbhai Chavda* AIR 1998 Guj. 17. Though the appellant could have rebutted the said presumption but rather than rebutting the same, has by her pleas and deposition admitted that she was not on the spot and not in the village.

21. Merit is also found in the plea of the respondent no.1 Gaon Sabha of the appellant having not proved that Dalbir Singh, who is claimed to have executed the sale deed in favour of the appellant, having any rights in the land.

22. As far as the contention of the counsel for the appellant, of the appellant being the owner of the land vide the sale deed is concerned, the Reforms Act did away with the concept of ownership of agricultural land and introduced the concept of bhumidhari and with respect whereto detailed provisions have been made in the said Act and in the Delhi Land Revenue Act, 1954, of maintenance of revenue records. The appellant thus, merely by holding the sale deed with respect to the land and without the executants of the sale deed or the appellant having been shown to be bhumidhar of the land, cannot assert any right in the land or claim any compensation for acquisition thereof. Reference in this regard may be made to *Hatti Vs. Sunder Singh* (1970) 2 SCC 841, *Nathu Vs. Hukam Singh* AIR 1983 Del 214 and *Gaon Sabha Vs. Nathi* (2014) 12 SCC 555.

23. In *Raj Singh, Ratan Singh* and *Gram Sabha, Mundka* supra the private persons to whom compensation was awarded had proved their possession of the land and which is not the case here.

24. There is thus no merit in the appeal. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 20, 2018

‘gsr’