

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

% **Date of decision: 15th October, 2018.**

+ **LA.APP. 150/2016 & CM No.22011/2016 (for stay)**

GURCHARAN SINGH CHADHA

..... Appellant

Through: Mr. L.B. Rai and Mr. Kartik Rai,
Advs.

Versus

THE B.D.O. (GAON SABHA MUNDKA) & ANR... Respondents

Through: Mr. Abhishek Kumar Singh, Adv. for
R-1.

Mr. Yeeshu Jain and Ms. Shilphi
Chaudhary, 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 and decree [dated 20th February, 2016 in LAC No.3A/12 Unique Case ID No.02401C0333142012 of the Court of the Additional District Judge-02, West] on a reference under Sections 30&31 of the Act with respect to Award No.13/DCW/2006-07, Village Mundka in regard to Khasra No.64/16 min (0-10), 17/1 (1-6) as per enclosed Naksha Muntzamim along with compensation of Rs.9,10,826/-.

2. The appeal came up first before this Court on 31st May, 2016, when notice thereof was ordered to be issued. Vide order dated 21st October, 2016, Trial Court record was requisitioned. On 7th September, 2017, after some hearing, the record relating to the proceedings under Section 81 of the Land Reforms Act, 1954, whereby the said land vested in Gaon Sabha, was requisitioned. The said record was not produced inspite of several opportunities. Ultimately, vide order dated 28th August, 2018, while giving

last chance to produce the record, the personal presence of the District Magistrate (West) on the next date of hearing was also directed. On 4th October, 2018, the District Magistrate (West) appeared and submitted a report in the form of affidavit to the effect that the record could not be traced.

3. It was however contended by the counsel for the respondent no.1 on 4th October, 2018, that there was an admission of the appellant of proceedings under Section 81 of the Delhi Land Reforms Act, 1954 and attention in this regard was drawn to grounds 'D' and 'E' of the memorandum of this appeal. The appeal, on 4th October, 2018, was posted for hearing for today.

4. The counsel of the appellant has been heard and the Trial Court record requisitioned perused.

5. Reference under Sections 30 & 31 of the Land Acquisition Act, 1894 was made for the reason "Dispute of ownership of said land" and naming the appellant Gurcharan Singh and Harvinder Singh, son of appellant Gurcharan Singh and the Gaon Sabha Mundka as the interested persons.

6. Gaon Sabha Mundka filed a claim petition before the Reference Court pleading (i) that the Gaon Sabha was the *Bhumidhar*/owner in possession of the subject land; copy of Khatoni was attached; (ii) that the land was vested in the Gaon Sabha vide orders/proceedings of concerned Sub-Divisional Magistrate (SDM) on finding violation of the provisions of Section 81 of the Land Reforms Act and the subject land, after vesting, was being used by Gaon Sabha; (iii) that the possession of the land was taken over from the Gaon Sabha on acquisition thereof; and, (iv) that the Gaon

Sabha was the rightful owner to get the amount of compensation with respect to the subject land.

7. Harvinder Singh, son of the appellant Gurcharan Singh did not file any claim. The appellant Gurcharan Singh filed a reply to the claim of the Gaon Sabha and made his own claim pleading (a) that the land never remained in possession of the Gaon Sabha and the appellant only remained in possession thereof till the date of dispossession during the acquisition proceedings; (b) that the alleged proceedings under Section 81 of the Land Reforms Act are vague and entry in the name of Gaon Sabha in revenue record was on the basis of vague proceedings under Section 81 of the Land Reforms Act, which were non-est and the Gaon Sabha was not entitled to any compensation; (c) that the Gaon Sabha never took possession of the land under Section 81 of the Land Reforms Act; (d) that the Gaon Sabha was not the *Bhumidhar* of the land and mutation entries in the revenue record do not confer any title on the Gaon Sabha; (e) that the appellant had purchased the subject land from one Smt. Parkash Wati vide registered General Power of Attorney (GPA) dated 3rd May, 1995; (f) that Smt. Parkash Wati had purchased the land from recorded owner Smt. Sunita vide registered Sale Deed dated 20th November, 1991; (g) that the appellant had no knowledge whether any proceedings under Section 81 of the Land Reforms Act had been initiated against the recorded owner and/or that in pursuance thereto the land had vested in the Gaon Sabha; however the Gaon Sabha never took possession and the appellant had been in continuous possession of the land till the time of acquisition thereof; (h) that the appellant had rented out the subject land to M/s Asian Rubber India; and, (i)

that the appellant only was entitled to compensation with respect to the subject land.

8. On the pleadings aforesaid, the following issues were framed in the Reference on 26th September, 2013:

“1. Which of the IP is entitled to the compensation amount in respect of the acquired land and to what an extent? OPP

2. Relief.”

9. The appellant filed his affidavit by way of evidence reiterating his pleadings and further deposing as under:

“That the proceedings Under section 81 of DLR Act had been wrongly initiated against the recorded owner i.e. I.P. No.2 in respect of land comprising in Khasra No.64/17 total land measuring 495 square yards and ultimately the land has been vested into the Gaon Sabha Mundka but the Gram Sabha never took possession of the land in question from I.P. No.2 or earlier owner of land in question and I.P. No.2 was in continuous possession of land in question from the date of purchased of land in question till the L.A.C. took possession from him. The I.P. No.2 never violated in provision of Delhi Land Reforms Act 1954 and the proceeding against the I.P. No.2 was uncalled for and vague in nature and the entries in the revenue records in favour of I.P. No.1 is on the basis of vague proceedings U/s 81 of DLR Act which is not binding upon I.P. No.2 and have no legal force.”

10. In cross-examination, the appellant stated that he had no knowledge that the land was used for purpose other than agricultural and vested in the Gaon Sabha and denied the suggestion that no mutation was recorded in his name as well as the suggestion that Smt. Sunita was not the recorded owner of the land.

11. The respondent Gaon Sabha examined an official from the office of

the Block Development Officer, who tendered into evidence the Khatoni showing the Gaon Sabha to be the *Bhumidhar* of the land in question. No objection was raised by the counsel for the appellant to admission into evidence of the said Khatoni. The said witness, in cross-examination stated (i) that the Khatoni had been issued by the Patwari from the Revenue Department, though he had not personally applied for the Khatoni; (ii) that he had not brought the original record of the Khatoni because the same was with the Revenue Department/Patwari; (iii) that it was correct that there was no column in the Khatoni Ex.IP1W1/A “mentioning the owner category of the land”; and, (iv) that he had no knowledge, whether Gaon Sabha had filed any execution to get possession of the land.

12. The Reference Court has held the respondent No.1 Gaon Sabha to be entitled to the entire compensation and held the appellant to be not entitled to any compensation, reasoning (a) that the Sale Deed executed by Smt. Sunita in favour of Smt. Parkash Wati, in para 5 thereof recorded that the land being sold was outside urbanised limits and for transfer thereof, as per Section 33 of the Land Reforms Act, no objection was required from the area Tehsildar / ADM; (b) that however no such objection, if any obtained from the Tehsildar was filed or proved; (c) that the GPA executed by Smt. Parkash Wati in favour of the appellant did not constitute transfer of title by Smt. Parkash Wati in favour of the appellant; (d) that no agreement to sell or receipt of payment of any consideration had been proved by the appellant; (e) that there was no valid transfer of land by sale in favour of the appellant; (f) that though the appellant claimed to have rented out the land to M/s Asian Rubbers (India) Ltd. but no rent agreement was proved; and,

(g) that on the contrary, the Gaon Sabha had proved the Khatoni in which the Gaon Sabha was shown as the *Khatedar* of the land.

13. The counsel for the appellant has argued, (I) that “what better document I can have”; (II) that Supreme Court in *Suraj Bhan Vs. Financial Commissioner* (2007) 6 SCC 186 has held that entries in revenue records did not convey title on a person whose name appeared in Record of Rights and were only for fiscal purpose i.e. payment of land revenue and no ownership was conveyed on the basis of such entries and that the disputes as to ownership could be settled only by the civil court; (III) that the Gaon Sabha has not proved vesting of the land in Gaon Sabha under Section 81 of the Land Reforms Act; (IV) that if there had been any such vesting, there would have been no need for acquisition; and, (V) that the Courts in such situations, have been awarding compensation equally to the Gaon Sabha and to the person having the Sale Deed.

14. I may at the outset state that I have in *Prem Lata Gupta Vs. Gaon Sabha, Mundka* 2018 SCC OnLine Del 11951, pronounced on identical contentions of the counsel for the appellant therein. However, since the counsel for the appellant has urged separately in this case, I proceed to deal with the contentions.

15. As far as the first contention aforesaid of the counsel for the appellant is concerned, the appellant, to claim as owner, even if permissible with respect to agricultural land governed by the Land Reforms Act, was required to have a sale deed of the land in his favour. In spite of the appellant not having the sale deed and having only a GPA, the counsel for the appellant asks ‘what better document’ the appellant could have.

Supreme Court in *Suraj Lamp & Industries P. Ltd. Vs. State of Haryana* (2009) 7 SCC 363 and (2012) 1 SCC 656, overriding the dicta of the Division Bench of this Court in *Asha M. Jain Vs. Canara Bank* (2001) 94 DLT 841 has held that there can be no transfer of title through the medium of agreement to sell, power of attorney, receipt, possession letter etc. The appellant, on the basis of GPA alone and as held by the Reference Court, without any agreement to sell, clearly has no semblance of a title with respect to the property and cannot have any claim whatsoever with respect to compensation thereof. A perusal of the GPA on Trial Court record also shows the same to be not for consideration and engrossed merely on a stamp paper of Rs.10/-.

16. As far as the reliance by the counsel for the appellant on *Suraj Bhan* supra is concerned, the parties subject matter of dispute therein, were heirs of the holder of the land, with some of the heirs claiming a Will having obtained mutation in their favour behind the back of the other heirs. It was in the said context that the observations relied upon by the counsel for the appellant were made. I have in *Prem Lata Gupta* supra held that the claim, in that case, of ownership on the basis of sale deed of the land was misconceived as the Land Reforms Act did away with the concept of ownership of agricultural land and introduced the concept of *bhumidhari* and with respect thereto detailed provisions have been made in the said Act and in the Delhi Land Revenue Act, 1954, of maintenance of revenue records. It was further held that merely by holding the sale deed with respect to the land and without the executants of the sale deed or the beneficiary of the sale deed having been shown to be *bhumidhar* of the

land, could not assert any title to the land or claim any compensation with respect thereto. Reliance was placed on *Hatti Vs. Sunder Singh* (1970) 2 SCC 841, *Nathu Vs. Hukam Singh* AIR 1983 Del 216 and *Gaon Sabha Vs. Nathi* (2004) 12 SCC 555.

17. The third contention of the counsel for the appellant, of the Gaon Sabha having not proved vesting of the land, has to be seen in the light of admission already made by the appellant in his claim petition and in his evidence, of the proceedings under Section 81 of the Land Reforms Act, as well as in the light of grounds 'D' and 'E' taken in this memorandum of this appeal, where also the appellant, by contending that the said proceedings were at the back of the appellant and the appellant was not afforded any chance, has admitted the factum of the said proceedings. Once the said factum is admitted, unless the vesting is set aside and qua which the appellant, inspite of knowledge did not take any steps, the Reference Court under Sections 30&31 of the Act cannot go into the question of legality or validity of the said proceedings under Section 81 of the Land Reforms Act. The same view has been taken in *Prem Lata Gupta* supra also and wherein, relying on a host of judgments, it has also been held that the law with respect to open land is that possession follows title. The appellant, in the present case, has done nothing to rebut the said presumption.

18. I may in this regard also observe that Section 35 of the Land Reforms Act bars any *Bhumidhar* or *asami* from letting out of the land except in the cases provided under Section 36 thereof and in which the appellant does not fall. Section 44 of the Land Reforms Act provides that when a *Bhumidhar*

has let out his holding or any part thereof, without being qualified to do so under Section 36, then notwithstanding anything contained in any law or contract, the lessee shall become and he deemed to be a purchaser of the land. The appellant, by admitting having let out the land, has disqualified himself from any compensation with respect to the land for this reason also.

19. The fourth contention of the counsel for the appellant of there being no need to acquire the land if the same had vested in the Gaon Sabha ignores the 73rd Amendment of the Constitution of India providing for Gaon Sabha as a local body. Thus, the land of Gaon Sabha, if required by the Central Government for public purpose, has to be acquired and the Central Government cannot appropriate to itself the land of the Gaon Sabha.

20. As far as the last contention of the counsel for the appellant is concerned, though undoubtedly there are some judgments where depending upon the facts, finding a modicum of a rights in a person other than Gaon Sabha, compensation has been appropriated but the appellant has neither proved any title nor proved possession and on the contrary, by his pleading of letting out of the land, disentitled himself, even otherwise from any compensation.

21. There is no merit in this appeal.

22. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 15, 2018

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