

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

% **Date of decision: 10th October, 2019**

+ **CS(OS) 165/2018**

SANRAJ FARMS PRIVATE LIMITED **Plaintiff**

Through: Mr. Rajesh Yadav with Ms.
Ruchira, Advs.

Versus

CHARAN SINGH & ANOTHER **Defendants**

Through: Mr. Shadan Farasat & Ms. Hafsa
Khan, Advs. for GNCTD.
Ms. Suman Chaudhary, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit, for (i) declaration that the land comprised in Khasra Nos.942 (4-16), 943(4-16), 944(4-16), 946 min (4-9), 947 (4-16) and 945 min. (4-9), totally measuring 28 Bighas 2 Biswas, situated in the Revenue Estate of village Rajokri, Tehsil Vasant Vihar, New Delhi has already been partitioned in accordance with the settlement recorded in the Settlement Agreement dated 19th August, 2008 and in the alternative for partition of the said land declaring the plaintiff to be the owner of 3/4th undivided share therein and the two defendants viz. Charan Singh & Bhagwan Singh to be the owner of the remaining 1/4th share in the said land; and, (ii) permanent injunction restraining the defendants from dealing with the said land.

2. The suit came up first before this Court on 17th April, 2018, when while issuing summons thereof, *status quo* with respect to title of the subject land was directed to be maintained.

3. The suit, after completion of pleadings, came up before this Court on 28th November, 2018 when the following order was passed:

“12. The suit is ripe for framing of issues.

13. The counsel for the plaintiff and the counsel for the defendants have handed over proposed issues which are taken on record.

14. The plaintiff has sued for declaration that the land subject matter of the suit stands partitioned between the plaintiff and the defendants and in the alternative for partition of the subject land. Relief of injunction restraining the defendants from dealing with the land is also sought.

15. It is inter alia the defence of the defendants that the suit is barred by Section 185 of the Delhi Land Reforms Act, 1954.

16. The counsel for the plaintiff states that with the issuance of Notification dated 18th June, 2013 issued by the Ministry of Urban Development (Delhi Division) in exercise of powers under Section 11(A)(2) of the Delhi Development Act, 1957, making modifications to the Master Plan for Delhi (MPD)-2021, the land ceased to be governed by the Delhi Reforms Act. Alternatively, it is contended that even if the land continues to be governed by the Delhi Reforms Act, the plaintiff is entitled to maintain a suit for declaration and injunction, though not for partition.

17. It is the case of the plaintiff in the plaint that though the plaintiff called upon the defendants to have the land so partitioned mutated in the records in respective bhumidari of the plaintiff and the defendants but the defendants did not join in the same.

18. I have wondered, whether not the remedy of the plaintiff therefor would be in terms of serial No.4 of Schedule I of the Delhi Reforms Act read with Section 185 thereof i.e. of applying for declaration of bhumidari rights.

19. On the pleading of the parties, the following issues are framed:

(I) Whether with the issuance of Notification dated 18th June, 2013 issued by the Ministry of Urban Development (Delhi Division) in exercise of powers under Section 11(a)(2) of the Delhi Development Act, 1957, the land subject matter of the suit has seized to be governed by the Delhi Land Reforms Act, 1954? **OPP**

(II) If the above issue is decided against the plaintiff, whether the suit for declaration, as filed, is maintainable in the Civil Court or jurisdiction of the Civil Court with respect thereto is barred by Section 185 of the Delhi Land Reforms Act? **OPPr**

(III) If the above issues are decided in favour of the plaintiff, whether the suit land was partitioned by metes and bounds between the parties and the defendants as claimed by the plaintiff and if so, to what effect? **OPP**

(IV) What is the effect, if any of Section 81 of Delhi Land Reforms Act, 1954 proceedings with respect to the subject land? **OPD**

(V) Relief.

19. No other issue arises or is pressed.

20. It is clarified that since the shares are not in dispute, if Issue No.(III) is decided against the plaintiff and Issue No.(I) is decided in favour of the plaintiff, a preliminary decree for partition shall follow.

21. The parties to file their list of witnesses within fifteen days.

22. Issues No.(I), (II) and (IV) do not require any evidence to be recorded and are ordered to be treated as preliminary issues.

23. *List for hearing on the preliminary issues on 23rd April, 2019.*”

4. The counsel for the parties were heard on 23rd April, 2019 on the preliminary issues aforesaid but since some doubts remained, it was deemed appropriate to hear the counsel for the Delhi Government thereon. Accordingly, the presence of the counsel for the Delhi Government was requisitioned.

5. The counsel for the Delhi Government appeared before this Court on 17th July, 2019 and was apprised of the controversy and the hearing adjourned to today.

6. The counsel for the Delhi Government has today in Court handed over a short status report dated 10th October, 2019 with respect to the property and which is taken on record and be tagged to Part-I file.

7. According to the status report aforesaid, village Rajokri is a rural village as per revenue records and it can be urbanized through a Gazette Notification under Section 507 of the Delhi Municipal Act, 1957 and no such Notification in respect of village Rajokri has been issued. It is further stated that the Notification dated 18th June, 2013 pertains to Delhi Development Authority Act, 1957, regarding the modification in Master Plan of Delhi 2021 and does not cease the rural nature of the village in accordance with the provisions of the Delhi Land Reforms Act, 1954.

8. Per contra, the counsel for the plaintiff has contended that the issue is no longer *res integra*.

9. Before considering the contentions of the counsel for the plaintiff, it is deemed appropriate to reproduce herein below the Notification dated 18th June, 2013 as under:

“MINISTRY OF URBAN DEVELOPMENT

(DELHI DIVISION)

NOTIFICATION

New Delhi, the 18th June, 2013

S.O1744(E). – Whereas certain modifications which the Central Government proposed to make in the Master Plan for Delhi-2021 as mentioned here under were published in the Gazette of India, Extraordinary, as Public Notice (addendum) vide S.O. No.34(E) dated 3.1.13 (in supersession of Addendum issued vide Public Notice S.O. No.2871 (E) dated 11.12.12) by the Delhi Development Authority in accordance with the provisions of Section 44 of the Delhi Development Act, 1957 (61 of 1957) inviting objections / suggestions as required by sub-section (3) of Section 11-A of the said Act, within ninety days from the date of the said notice.

2. Whereas, objections/suggestions received with regard to the proposed modifications have been considered by a Board of Enquiry and Hearing, set up by Delhi Development Authority and also approved at the meeting of the Delhi Development Authority.

3. Whereas, the Central Government has after carefully considering all aspects of the matter, decided to modify the Master Plan of Delhi-2021.

4. Now, therefore, in exercise of the powers conferred by sub-section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modifications in the said Master Plan for Delhi-2021 with effect from the date of publication of this Notification in the Gazette of India.

A new para at 4.2.2.1 (D) is inserted after para 4.2.2.1 (C) as under:

4.2.2.1(D) LOW DENSITY RESIDENTIAL AREA

The majority of Farm Houses in the urban extension areas are located on lands where ground water has already been severely depleted or close to such depletion. Further, intensification of residential density and heavy additional load on civic infrastructure such as water supply, Drainage, Sewerage, Parking, etc. is highly undesirable in such areas from environmental considerations. Therefore, Villages containing existing farm houses clusters are notified as “Low Density Residential Area” (list of village at Annexure-I). Low Density Residential Plots are also allowed in the village falling in Green belt (List of villages in Green Belt at Annexure-II).”

10. In the list of villages declared as ‘low density residential area’ in urban extension, appended to the Notification aforesaid, mention of Rajokri is found at serial no.14.

11. The counsel for the plaintiff has also referred to Notification dated 4th July, 2018 issued by the Delhi Development Authority (DDA) in exercise of powers conferred by Section 57(1) of the Delhi Development Act, 1957, promulgating the “Regulations for Enabling the Planned Development of Privately Owned Lands” and Regulation 5.3. whereof provides as under:

“5.3 The land parcels falling under “Residential” land use, within Low Density Residential Area (LDRA) shall be governed as per the provisions given under Para 4.4.3 (G) Low density Residential Plot of Chapter 4 in MPD-2021.”

12. The counsel for the plaintiff refers to *Shri Neelpadmaya Consumer Products Pvt. Ltd. Vs. Satyabir @ Satbir & Ors.* 227 (2016) DLT 654, *Gur Pratap Singh Vs. Union of India* (2004) 111 DLT 25, appeal preferred whereagainst was dismissed in *Lt. Governor of Delhi Vs. Gur Pratap Singh* (2004) 113 DLT 690 (DB), to advance his contention that this issue is no longer *res integra*.

13. In *Gur Pratap Singh* supra, vide Gazette Notification dated 16th June, 1995 by DDA for amendment of the Master Plan, motels were permitted under Rural Zones/Green Belts and in Commercial Zones and National Highways and Inter-State Roads as defined in the Notification. However, on petitioner therein raising construction of a motel over his land in terms thereof, the SDM started proceedings under Sections 23 and 81 of the Delhi Land Reforms Act, 1954. It was held that (i) land is defined in Section 3(13) of the Delhi Land Reforms Act, 1954 and vide Section 22 thereof land can be used only for the purposes connected with agriculture, horticulture or animal husbandry; once vide amendment of the Master Plan, the land is permitted to be used as a motel, the land is no more agricultural within the meaning of Section 3(13) of the Land Reforms Act; (ii) the Land Reforms Act is an enactment for protecting agricultural use of the land; once the land itself ceases to be agricultural, there is really speaking no question of application of the Land Reforms Act; (iii) the amendment of the Master Plan was in accordance with the Section 53(2) of the DDA Act, 1957 and which overrides the provisions of any other law; and, (iv) Section 53(3) of the DDA Act makes it clear that once permission for development in respect of any land has been obtained, the same shall not be deemed to be unlawful by reason of the fact that such permission is required under any other law and which permission has not been obtained; the mandate of the

DDA would have an overriding effect, even if the Land Reforms Act was to apply.

14. In appeal preferred thereagainst, the Division Bench confirmed the finding of the Single Judge. It was observed that once the Master Plan, which admittedly covered the subject land, gave an option for use of the land falling in Rural Zone or Green Belt as a motel, on the exercise of the said option, the subject land goes out of ambit of Section 23 of the Land Reforms Act, because it would not constitute a change of land use necessitating permission under the said provision.

15. In *Shri Neelpadmaya Consumer Products Pvt. Ltd.* supra, one of the issues for adjudication in the suit was whether the suit land was governed by the provisions of Delhi Land Reforms Act and the agreement between the parties was in violation of the provisions of the said Act. Following the judgments aforesaid, it was held (i) that a notification for urbanization need not only be through a notification under Section 507 of the Delhi Municipal Corporation Act as the later part of Section 3(13) of the Land Reforms Act does not in any way require that there is only one manner of notification viz only under Section 507 of the Delhi Municipal Corporation Act; (ii) Section 3(13) of the Land Reforms Act only requires that a notification is issued in an Official Gazette to make the land as part of the Delhi town and New Delhi town; once a notification is issued applying a zonal plan issued pursuant to the Master Plan showing that subject lands are covered under the zonal plan issued by the DDA, in such a situation it has to be held that the lands cease to be the lands covered under the Land Reforms Act because the issuance of a notification in the Official Gazette results in the lands becoming part of Delhi town; and, (iii) that as per Sections 1,

3(5) and 3(15) of the Delhi Land Reforms Act, once an area falls within a town area and an area ceases to be an agricultural land because it has to be developed as part of the development of the Delhi town or New Delhi town, then such an area no longer remains an agricultural area for being covered under the expression 'land' as defined in Section 3 (13) of the Land Reforms Act.

16. The counsel for the defendants has contended that the land continues to be shown as rural/agricultural and is not shown in the list of urbanized village published by the Delhi Government. She thus contends that the bar to the maintainability of the suit for partition before the Civil Court applies and the remedy if any of the plaintiff for partition is before the Revenue Assistant.

17. The counsel for the Delhi Government has also contended that the stand of the Delhi Government is that the land is in the Rural Belt and agricultural and governed by the provisions of Delhi Land Reforms Act.

18. The counsel for the plaintiff fairly informs that the stand of the SDM in the proceedings initiated against the plaintiff under Section 81 of the Delhi Land Reforms Act is that the judgments aforesaid are not binding on the SDM since Delhi Government was not a party to *Shri Neelpadmaya Consumer Products Pvt. Ltd.* supra. He however points out that *Gur Pratap Singh* supra is by way of a Writ Petition and to which this Government of Delhi was a party and the appeal was filed by the Lieutenant Governor, Delhi and thus the Delhi Government is fully bound by the view taken in the said judgments.

19. The plaintiff, in the present suit has not impleaded the Government of NCT of Delhi as a defendant and the presence of the counsel of the GNCTD before this Court was sought vide order dated 23rd April, 2019, only for the purposes of clarification and the counsel for the Delhi Government has placed the stand of the Delhi Government before this Court.

20. I have enquired from the counsel for the plaintiff, the effect of following the aforesaid judgments on Issue No. IV framed on 28th November, 2018.

21. The counsel for the plaintiff states that once this Court holds that the suit for partition is maintainable before this Court, reasoning that the land is not governed by the provisions of Delhi Land Reforms Act, the proceedings under Section 81 of the Delhi Land Reforms Act in any case would not be maintainable.

22. However the fact remains that no finding given in this suit, to which the Government of NCT of Delhi is not a party, can be binding on the Government of NCT of Delhi. Thus, though for the purposes of the jurisdiction of this Court the said question is being adjudicated but in my view, it cannot *ipso facto* follow that owing to the said judgment the proceedings underway before the Revenue Assistant against the plaintiff with respect to the subject land, under Section 81 of the Delhi Land Reforms Act, would come to an end. It would be open to parties to make their contentions in this regard before the Revenue Assistant and in further proceedings if any arising from any order therein.

23. In view of the aforesaid judgments which are binding on me, it has but to be held that on the issuance of notification dated 18th June, 2013, the land subject matter of the suit, insofar as for the purposes of maintainability of the proceedings before the Courts under the Delhi Land Reforms Act, has ceased to be governed by the Delhi Land Reforms Act and Issue No.I is accordingly decided in favour of the plaintiff and against the defendants.

24. Axiomatically, qua Issue No. II, it is held that the jurisdiction of this Court to entertain this suit for partition of the subject land is not barred by Section 185 of the Delhi Land Reforms Act.

25. In view of the finding above, the need to go into the question, whether a suit for declaration alone, even if not a suit for partition, would be maintainable, does not arise and the said legal question is thus left unanswered.

26. Issue No. IV is decided observing that though *inter se* the parties to the suit it is held that in view of the notifications aforesaid, the proceedings under Section 81 of the Delhi Land Reforms Act do not affect this suit, however, viz-a-viz the Delhi Government, the plaintiff will have to raise its contentions before the Revenue Assistant or before other appropriate fora/Court.

27. The counsel for the defendants, on specific query whether the defendants are disputing the three-fourth share claimed by the plaintiff in the land, states that it is not disputed that the plaintiff is the owner of three-fourth undivided share in the land admeasuring 28 bighas 2 biswas aforesaid and the share of the two defendants jointly is one-fourth. On further enquiry whether the defendants desire *inter se*

partition, the answer is in the affirmative and it is stated that the share of the two defendants in the said one-fourth land is equal i.e. one-eighth each.

28. That leaves the plea of the plaintiff, of the land having already been partitioned.

29. The counsel for the plaintiff in this context has drawn attention to site plan at page 16 of the Part IIIA file and has contended that the portion of the land shown in yellow colour represents three-fourth land and in the partition had fallen to the share of the plaintiff and the portion of the land shown in red stripes represents one-fourth undivided share in the land and had jointly fallen to the shares of the defendants.

30. The counsel for the plaintiff has also drawn attention to the Ekrarnama dated 19th August, 2008 executed by the plaintiff and the two defendants.

31. The counsel for the defendants does not deny signatures of the defendants on the Ekrarnama dated 19th August, 2008 as well as on the site plan at page 16 of the Part-III A file but contends that the said document was executed only for the purposes of better utilization/cultivation of the land and not by way of partition of the land. Ex.C-2 is put on the Ekrarnama dated 19th August, 2008 in today's date.

32. I have enquired from the counsel for the defendants that even if the defendants are disputing the partition claimed by the plaintiff and do not find the partition by metes and bounds as depicted in the site

plan at page 16 of the Part-III A file to be equitable, how else do the defendants want the land to be equitably partitioned.

33. The counsel for the defendants has not suggested any mode of partition other than by metes and bounds and has fairly stated that the partition as depicted in the site plan at page 16 divides the three-fourth share of the plaintiff and one-fourth share of the two defendants by metes and bounds equitably subject to the objection of the defendants of the maintainability of the suit before this Court owing to the bar of Section 185 of the Delhi Land Reforms Act.

34. Once it is so, even if the land has not been partitioned earlier by metes and bounds, there is no impediment to now a decree for partition of the subject land by metes and bounds as shown in the site plan at page 16 of Part III A file and on which now Ex.C-1 is put in today's date, being passed.

35. I have enquired from the counsel for the plaintiff, whether site plan Ex.C-1 shows the dimensions of the separate demarcations of the land.

36. The counsel for the plaintiff states that boundary walls were erected in August, 2008 at about the time when the Ekrarnama and the site plan Ex.C-1 were filed.

37. The counsel for the defendants confirms. She however states that the boundary walls were not constructed by the plaintiff but were constructed by the defendants themselves.

38. Thus, the land has also been physically divided by metes and bounds.

39. In view of the aforesaid emerging position, the need to relegate the parties to evidence on Issue No. III is also not felt.

40. Resultantly, a preliminary decree for partition of land comprised in Khasra Nos.942 (4-16), 943 (4-16), 944 (4-16), 946 min (4-9), 947 (4-16) and 945 min. (4-9), totally measuring 28 bighas 2 biswas, situated in Revenue Estate of Village Rajokri, Tehsil Vasant Vihar, New Delhi, is passed declaring the plaintiff Sanraj Farms Pvt. Ltd. to be having three-fourth undivided share therein and declaring the two defendants Charan Singh and Bhagwan Singh to be having one-eighth undivided share each therein.

41. Preliminary decree for partition be drawn up.

42. A final decree for partition of land comprised in Khasra Nos.942 (4-16), 943 (4-16), 944 (4-16), 946 min (4-9), 947 (4-16) and 945 min. (4-9), totally measuring 28 bighas 2 biswas, situated in Revenue Estate of Village Rajokri, Tehsil Vasant Vihar, New Delhi by metes and bounds is also passed, in terms of site plan Ex.C-2 and in accordance wherewith boundary walls are informed to have been already erected on the land.

43. Final decree for partition be drawn up.

44. The stamp duty on the final decree for partition to be borne by the parties in the ratio of plaintiff's three-fourth share and each of the two defendants one-eighth share.

45. The parties to bear their own costs.

Decree sheet be prepared.

OCTOBER 10, 2019

'gsr/ak'..

(Corrected & released on 24th October, 2019)

RAJIV SAHAI ENDLAW, J