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

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Date of Decision: 12.12.2019

+ W.P.(C) 103/2016 and CM APPL. No. 480/2016

DAULAT RAM AND ORS Petitioners
Through Ms.Monica Sharma and Mr.Sugam
Sharma, Advs.

versus

THE GOVT OF NCT OF DELHI Respondent
Through Mr.Naushad Ahmed Khan, ASC,

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. This writ petition is filed seeking the following reliefs:-

“(a) issue an appropriate writ, order or direction in the nature of certiorari quashing the impugned order dated: 27.08.2015 passed by the Secretary Revenue-Cum- Divisional Commissioner under Section 17 of the Indian Forest Act in Appeal Titled "Daulat Ram & Ors. V/S Deputy Commissioner of Forest (South);

(b) issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to release the land falling in Khasra no. 18/1 (2-2), 21min(4-16), 22(4-16), 24min(3-2) and 25 (5-7) total land measuring 20 Bigha 3 Biswa situated in the Revenue Estate of Village Deramandi, New Delhi;”

2. The case of the petitioners is that Late Sh. Ram Lal was allotted a Qabiz Land by order dated 13.07.1982. The said Sh. Ram Lal was handed over the land under Khasra No. 18/1(2-2), 21 min (4-16), 22(4-16), 24 min

(3-2) and 25(5-7) i.e. a total land of 20 Bighas and 3 Biswas situated in the Revenue Estate of Village Deramandi Tehsil Mehrauli, Ridge Area, New Delhi. It is claimed that Sh.Ram Lal got possession of the land and started cultivation thereof. It was pleaded that the said land of the petitioners is being cultivated since 1982-83. The petitioners have also filed khasra girdawaries of the land handed over to their late father.

3. Vide notification dated 04.04.1996, the land in question was handed over to the Forest Department by the Government of NCT of Delhi. When the petitioners became aware of the same, a representation was filed before the Additional Collector/Settlement Officer praying for release of the said land. The Additional Collector dismissed the representation of the petitioner by order dated 20.09.2013. The petitioners filed an appeal against the said order before the Secretary Revenue-cum-Divisional Commissioner under Section 17 of the Indian Forest Act. The said appeal was also dismissed on 27.08.2015. Hence, the present writ petition.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioners has urged as follows:

(i) Relying upon a communication dated 13.07.1982, it is claimed that the land in question was allotted to Sh.Ram Lal, the predecessor of the petitioners. It is stated that the land was given to various persons and the case of the petitioners is shown in the list at serial number 107. She states that the petitioners have been in cultivatory possession since the said date.

(ii) It is further stated that the notification in question which is relied upon by the respondent to try and dispossess the petitioner is dated 04.04.1996 and deals with uncultivated or surplus land of the Gaon Sabha which was excluded from vesting in the Gaon Sabha. The land in question is a

cultivated land. Hence, the notification in question does not apply to the land is question.

(iii) It is further pleaded that the khasra number of the land of the petitioner is not stated in the said notification. The notification has no application to the facts of this case.

(iv) She further states that the factum of the allotment of the land to the petitioners under the beneficial scheme of the respondent has not been denied by the respondent in the counter-affidavit.

6. Learned counsel for the respondent however states that the petitioners are rank trespassers. Khasra girdawries do not record the name of the petitioners. There is no document to show that the petitioners are in lawful possession of the property in question. Hence, there are no reasons to interfere in the impugned order.

7. A perusal of the impugned order dated 27.08.2015 shows that the learned counsel for the petitioners had admitted that the land in question has been shown as belonging to the Gaon Sabha in the record of rights. It is reiterated that the land claimed by the petitioners is recorded as Gaon Sabha land since the time the revenue records were finalized after consolidation. It is also stated that no records have been produced to show title at the time of notification. The order concludes that mere reliance on some stray entries would have no value. Based on the above, the plea of the petitioners was dismissed.

8. The petitioners have themselves placed on record the khasra girdawaries in question which are attached to the writ petition for the year 1981-82 which shows the land as classified in the khatauni as the land of Gaon Sabha.

9. A perusal of the counter-affidavit filed by the respondent would show that the respondent has also pleaded as follows:-

“(i) The land in question falling in Khasra Nos. 110/18/1 (2-02), 21/1/2 (4-16), 22 (4-16), 24/2 (3-02) and 25 (5-07) village Dera Mandi is recorded as Gaon Sabha land since the time the revenue records were finalized after consolidation.

(ii) The Petitioner has not filed any objections for suit land in question at the time of Notification for Ridge in 1994. Subsequently vide Notification No. F.1/29/PA/DC/95 dated 04/04/1996 the suit land was handed over to the Forest Department, Govt. of NCT of Delhi and is notified as Ridge reserved forest.”

10. It is clear from the above documents which are placed on record that the revenue records do not show the possession of the petitioners. They do not show title of the petitioners. Reliance upon the alleged letter of allotment would be of no benefit to the petitioners.

11. Reference may also be had to Rule 176 and Rule 185 of the Delhi Panchayat Raj Rules, 1959 which states that for transfer of immovable property by Gaon Sabha, consent of the Chief Commissioner or Deputy Commissioner is necessary. Further, the LG has circulated a circular which states that the allotment of agricultural land by Gaon Sabha must be after approval of the Panchayat Department. Rule 176 and Rule 185 of the Delhi Panchayat Raj Rules, 1959 read as follows :-

“176. Transfer of immovable property vested in the Gaon Panchayat. – The Gaon Panchayat shall not transfer otherwise than by way of lease, without a premium any immovable property vested in it except with the previous approval of the Chief Commissioner in case its value exceeds five hundred rupee and on such conditions as the Chief Commissioner may approve and in other cases sanction of the Deputy

Commissioner with such conditions as he may impose shall be necessary.”

“185. Transfer. – No immovable property vested in or belonging to a Gaon Sabha shall be transferred by sale, mortgage or exchange except on the resolution of a Gaon Panchayat and with the sanction of the Chief Commissioner.”

12. In view of Rule 176, the Gram Panchayat cannot transfer by way of lease any immovable property except with the previous approval of the Chief Commissioner/Deputy Commissioner. Similarly Rule 185 states that no immovable property in the Gaon Sabha shall be sold without resolution of the Gaon Panchayat and with the sanction of the Chief Commissioner. The documents placed on record by the petitioner do not show that the said necessary sanction was obtained from the concerned Chief Commissioner.

13. The following conclusions follow. Firstly, the petitioners hold no valid allotment of the land and hence they do not have any rights in the land. Secondly, pursuant to the notification dated 04.04.1996 the petitioners had filed a representation before the Additional Collector/Settlement Officer and an appeal before the Secretary Revenue-Cum-Divisional Commission. Both the officials did not accept the plea of the petitioners. There are no cogent reasons as to why the said orders are liable to be set aside.

14. In the light of the above fact, the plea of the learned counsel for the petitioners that the notification dated 04.04.1996 does not encompass land of the petitioners is misplaced.

15. Looking at the facts of this case, there is no merit in the petition and the same is dismissed. Pending application, if any, also stands dismissed.

16. At this stage, learned counsel for the petitioner has pointed out that in

a connected matter being W.P. (C) 2418/1997 titled as “Bhim Sain Gupta vs. U.O.I. & Ors.” relief has been granted to the similarly placed persons.

17. I may note that on 27.09.2019, this court had directed the record of the said writ petition to be placed before this court today. However, as the record was not made available by the Registry, the court was inclined to await the record and adjourn the matter. The matter was heard on the request of the learned counsel for the petitioner on account of alleged harassment being caused to the petitioners by the respondent.

18. The petition is dismissed.

JAYANT NATH, J

DECEMBER 12, 2019

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