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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 02.12.2019
Judgment pronounced on: 31.01.2020

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W.P. (C) No.12371/2019

MAHENDER

..... Petitioner

Through: Ms. Nidhi Jain & Ms. Sarita Rout,
Advocates.

versus

GOVT. OF NCT OF DELHI AND ORS

..... Respondents

Through: Mr. Rizwan, Mr. Apoorv Singhal &
Mr. Sameydeen, Advocates for GNCTD

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (JUDGMENT)

1. By this writ petition the petitioner seeks to challenge the order of the Financial Commissioner dated 04.10.2019, order of the Deputy Commissioner dated 12.10.2015 and of the SDM dated 25.06.2014 rejecting the application of the petitioner for grant of *bhumidhari* rights under Section 74 (4) of the Delhi Reforms Act, 1954 (hereinafter referred to as 'DLR Act').

2. The facts show a long history of events commencing from 1984. The petitioner states that he was allotted land being 38/4, 4 bighas, 16 biswas in Gaon Jhuljhulli by the Gaon Sabha of the said village. It is pleaded that under the 20-point programme of the Central Government, the village Panchayats prepared lists of villagers, who fulfilled the criteria. Vide Resolution dated 12.07.1984 held under the Chairmanship of the Deputy Director Panchayat, the enlisted villagers were allotted one acre land each. It is pleaded that the petitioner thereafter became *Assami* of the respondents. The allotments are also said to have been approved by Resolutions dated 12.09.1984 and 27.09.1984 of the Gaon Sabha. Possession of the land was handed over vide Resolution dated 30.10.1984. It is pleaded that the petitioner has been in possession of the said land and continues to cultivate the same till date. The land was *banjar* and the petitioner made the land cultivable by hard work, day and night. Thereafter, the petitioner applied to the revenue authorities for recording possession and cultivation in the revenue records in favour of the petitioner relying upon Section 74 (4) of the Delhi Land Reforms Act, 1954. It is stated that the Patwari carried out an inspection of the land on 08.03.1991 and confirmed the possession of the petitioner; however, the possession of the petitioner was not recorded in the khasra girdawari.

3. Aggrieved by the above act of the respondents, the petitioner along with 25 similarly placed villagers filed a writ petition before this court being W.P. (C) No.245/1992. This court appointed a Local Commissioner to inspect the land. The Local Commissioner confirmed the possession of the petitioner and that the same was being used for agricultural purposes.

4. The respondents had filed a counter-affidavit in the said writ petition (W.P. (C) 245/1992). In the said counter-affidavit, the respondents took the plea that the Director Panchayat at no point of time gave his sanction as required under Rule 178 of the Delhi Panchayat Raj Rules, 1959 (hereinafter referred to as the 1959 Rules). Hence, the possession of the petitioner was illegal. The writ petition was disposed of on 14.08.2001 and this court directed the respondents to record the possession of the person who is cultivating the fields at the spot in accordance with the provisions of the Act and the rules framed there under.

5. It is the grievance of the petitioner that as steps were not taken to comply with the said order dated 14.08.2001, a contempt petition was filed. On 05.12.2002, in the said petition, the court recorded the statement of the respondents that the revenue authorities shall take action to record the possession of the petitioner in the revenue records in accordance with the said judgment. It is pleaded that instead of complying with the said order dated 14.08.2001, the Halka Patwari gave a report for initiation of eviction proceedings under Section 86A of the DLR Act against the petitioner. The respondents also filed an affidavit in the contempt petition that necessary action for recording of unauthorized possession of the petitioner and others have taken place by filing Form P-5A by the Halka Patwari. It is also stated that action under Section 86A of the DLR Act has also been initiated. The contempt petition was disposed of on 25.03.2003.

6. The grievance of the petitioner is that the respondents under the direction of the Deputy Commissioner struck off the name of the petitioner from the revenue record without granting an opportunity of being heard. Further, it was claimed that as the petitioner had been in possession of the

said land since five years as *Assami* and has also reclaimed the land. Hence the petitioner was entitled to be admitted as *bhumidar* under Section 74(4) of the DLR Act. It is also pleaded that the proceeding initiated by the respondents under Section 86A of the DLR Act are barred by time and hence, are not maintainable. The petitioner also initiated proceedings under Section 74(4) of the DLR Act.

7. The petitioner filed another writ petition being W.P. (C) No.6978/2009 before this Court. While disposing of the said writ petition, a direction was passed vide order dated 01.12.2010 that the revenue court before whom proceedings are pending under Section 74 (4) and Section 86A of the DLR Act should dispose of the said proceedings within nine months. It was further directed that both the proceedings were to be taken up simultaneously.

8. Pursuant to the above directions, on 25.06.2014, the SDM dismissed the application of the petitioner under Section 74 (4) of the DLR Act. An ejectment order was passed against the petitioner and 25 others under Section 86A of the DLR Act.

9. Against the aforesaid order dated 25.06.2014, the petitioner filed an appeal under Section 187 of the DLR Act before the Deputy Commissioner. Similar appeals were also filed by the other aggrieved villagers. As no interim orders were passed, it is stated that the Tehsildar malafidely sought to handover the possession of the land to the BDO on 12.11.2014. It is claimed that the report of the Tehsildar is false as possession of the said land is still with the petitioner and the crops are standing on the said land.

10. Pursuant to another writ petition filed by the petitioner in this court being W.P. (C) No.8347/2014 and directions issued thereof, the Deputy

Commissioner disposed of the appeals filed by the petitioner and 25 other villagers by a common order dated 12.10.2015. By the said order, the Deputy Commissioner upheld the order passed by the SDM and dismissed the claims of the petitioner under Section 74 (4) of the DLR Act for *bhumidhari* rights and allowed ejectment of the petitioner under Section 86A of the DLR Act.

11. Against above order under Section 86A of the Act, as no further appeals lie in the proceedings under the DLR Act, the petitioner filed a writ petition being W.P. (C) No.10594/2011 along with 25 other villagers. Regarding dismissal of proceedings under Section 74 (4) of the DLR Act, the petitioner filed a second appeal before the Financial Commissioner. The Financial Commissioner dismissed the appeal of the petitioner on 04.10.2019 i.e. the impugned order.

12. I have heard learned counsel for the parties.

13. Learned counsel for the petitioner has strenuously pleaded as follows.

She submits that the Resolutions have duly been passed by the Village Panchayat in the presence of Deputy Director (Panchayat) on 12.07.1984. Pursuant to the said Resolution dated 12.07.1984, on 27.09.1984 a list setting out the names of the villagers who were being allotted land in question was released. Hence, it is pleaded that the petitioners have lawfully being put in legal possession of the lands since 1984.

It is further pleaded that the petitioner has been in cultivatory possession since 1984 till date. The petitioner was recorded as an *Assami* pursuant to the orders of this court dated 14.08.2001 as is evident from the revenue records. Hence, under Section 74 (4) of the DLR Act as the land has been reclaimed, the petitioner had to be admitted as a *bhumidhar*. The

impugned orders, it is submitted, erroneously have not noted the correct legal position.

14. Learned counsel for the respondents has however refuted the aforesaid contentions. It has been pleaded that in the counter-affidavit filed in the earlier writ petition being W.P. (C) No.245/1992 it is clearly stated that the Resolution dated 27.09.1984 was only a proposal for allotment of agricultural land to 68 persons. The Resolution dated 30.10.1984 of the Gaon Panchayat sought to allot agricultural land. However, the Resolution mentions that the approval of Deputy Director (Panchayat) has been obtained for the said allotment. However, the matter of fact is that the Director of Panchayats had at no point given sanction as is mandatory under Rule 178 of the 1959 Rules. It is stated that the prior sanction of the Director of Panchayat is mandatory where the terms of the lease does not exceed ten years. Hence, the alleged allotment in favour of the petitioner by Gaon Sabha is invalid. It is further pleaded that appropriate procedure to allot land was not followed e.g. no income certificate, certificate of proof of residence was sought. It is further pleaded that as per the Resolution dated 30.10.1984, the land was allotted for a fixed period, namely, five years. On expiry of the said period, in any case the land reverted back to the original owner, namely, Gaon Sabha.

15. I may look at the impugned order passed by the Financial Commissioner. The Financial Commissioner clearly noted in her order dated 04.10.2019 that the Resolution dated 12.07.1984 mentions that a meeting was held in the presence of the Deputy Director (Panchayat) but the same does not record approval/name of the petitioner, for allotment of land. Only general guidelines have been discussed. The names of the individuals

who were allegedly allotted land first appear only in Resolution dated 27.09.1984 where there is no indication of any presence or approval of the Director of Panchayat. The said Resolution merely records that the Pradhan has mentioned that it has been approved by the Deputy Director (Panchayat). No date or approval number or signature of the competent authority is on record. Similar is the position regarding the statement of handing over of possession as mentioned in the resolution dated 30.10.1984. In fact, it is stated in the said order that the said resolution has been sent to the competent authority for further necessary action. The said Resolution is not signed by the competent authority.

16. Reliance is placed in the impugned order on Rule 176 and Rule 185 of the Delhi Panchayat Raj Rules, 1959 to state that for transfer of immovable property by Gaon Sabha, consent of the Chief Commissioner or Deputy Commissioner is necessary. Further, the LG has circulated instruction which state that the allotment of agricultural land by Gaon Sabha must be after approval of the Panchayat Department. The procedure further established is that there should be an income certificate for each allottee from the revenue agency, a certificate from the Panchayat Secretary that the allottee is a resident of the village. None of this was done. Based on the above facts, the appeal of the petitioner was dismissed.

17. I may now deal with the contentions of the petitioner.

18. 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 rupees 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.”

19. 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 immovable property in the Gaon Sabha shall be sold with the 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. It is obvious from a perusal of the documents placed on record that the resolution dated 10.07.1984 is said to be signed under the chairmanship of Deputy Director of Panchayat. It only talks of the categories of the persons who should be brought under the resolution. The name of the petitioner does not find place in the said resolution. The resolution dated 27.09.1984 which gives the name of the petitioner is nowhere signed by the Chief Commissioner concerned. Clearly, the requirements of Rule 176 were not complied with.

20. A perusal of the aforesaid Rules would show that the said prior sanction is mandatory. It is a safeguard introduced to ensure that decision of the Gaon Panchayat is not taken in an arbitrary and whimsical manner.

Reliance in this regard may be had to the judgment of the Supreme Court to the case titled ***Govindlal Chhaganlal Patel vs. Agricultural Produce Market Committee, Godhra & Others; (1975) 2 SCC 482*** where the court held as follows:-

“11. Maxwell, Crawford and Craies abound in illustrations where the words “shall” and “may” are treated as interchangeable. “Shall be liable to pay interest” does not mean “must be made liable to pay interest”, and “may not drive on the wrong side of the road” must mean “shall not drive on the wrong side of the road”. But the problem which the use of the language of command poses is: Does the Legislature intend that its command shall at all events be performed? Or is it enough to comply with the command in substance? In other words, the question is: is the provision mandatory or directory?”

12. Plainly, “shall” must normally be construed to mean “shall” and not “may”, for the distinction between the two is fundamental. Granting the application of mind, there is little or no chance that one who intends to leave a leeway will use the language of command in the performance of an act. But since, even lesser directions are occasionally clothed in words of authority, it becomes necessary to delve deeper and ascertain the true meaning lying behind mere words.

13. Crawford on Statutory Construction (Edn. 1940, Article 261, p. 516) sets out the following passage from an American case approvingly:

“The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.”

Thus, the governing factor is the meaning and intent of the Legislature, which should be gathered not merely from the words used by the Legislature but from a variety of other circumstances and considerations. In other words, the use of the word “shall” or “may” is not conclusive on the question whether the particular requirement of law is mandatory or directory. But the circumstance that the Legislature has used a language of compulsive force is always of great relevance and in the absence of anything contrary in the context indicating that a permissive interpretation is permissible, the statute ought to be construed as peremptory. One of the fundamental rules of interpretation is that if the words of a statute are themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature.....

“The term ‘shall’ in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the Legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations.”

21. Reference in this regard may also be given to the judgment of the Supreme Court of India titled ***Lachmmi Narain & Others vs. Union of India & Others; (1976) 2 SCC 953*** where the court held as follows:-

“68. The primary key to the problem whether a statutory provision is mandatory or directory, is the intention of the law-maker as expressed in the law, itself. The reason behind the provision may be a further aid to the ascertainment of that

intention. If the legislative intent is expressed clearly and strongly in imperative words, such as the use of “must” instead of “shall”, that will itself be sufficient to hold the provision to be mandatory, and it will not be necessary to pursue the enquiry further. If the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the intent that the provision is to be mandatory. (Crawford, The Construction of Statutes, pp. 523-24).....”

22. Clearly, Rules 176 and 185 of the Delhi Panchayat Raj Rules lay down a mandatory criterion. The intent behind the said rules is to ensure that village land is not frittered away. Hence the requirement for prior consent from the appropriate government department. The Resolutions relied upon by the petitioner to claim allotment of land being without approval of the concerned government officer have been rightfully held to be illegal and confers no right, title or interest on the petitioner in the land in question.

23. Regarding plea of the petitioner placing reliance on Section 74(4) of the DLR Act is concerned, the same is also misplaced. Much stress was led by the learned counsel for the petitioner on the fact of alleged compliance of section 74 of the DLR Act by the petitioner. Section 74 of the DLR Act reads as follows:

“74. Admission to land mentioned in sub-clause (iii) of clause (a) of section 6 or to waste land for reclamation –

(1) The Gaon Sabha shall have the right to admit to any person as Asami to any land falling in any of the classes mentioned in

(2) sub-clause (iii) of clause (a) of section 6 where-

(a) the land is vacant land,

(b) the land is vested in the Gaon Sabha, or

(c) the land has come into the possession of the Gaon Sabha under section 72 or under any other provision for reclamation of this Act.

(2) In order to encourage the reclamation of waste land, the Gaon Sabha shall also have the right to admit any person as Asami on a five years lease to any land which forms part of the cultivable or uncultivable waste area of the village not included in holdings, which are vested in the Gaon Sabha under section 7, but which do not fall in any of the classes mentioned in sub-clause (iii) of clause (a) of section 6.

(3) The Asami shall have the right to hold the land for the period of five years at a rate of rent, which shall not be more than 50 percent of the prevailing rate of rent of the village, payable for the land.

(4) At the end of five years, the Gaon Sabha shall report to the Revenue Assistant the extent to which reclamation has been made. The Revenue Assistant shall, after necessary enquiry and after hearing the Asami, either order the termination of the lease and his ejection if there has been no reclamation or extend his lease for another period of two years. If, however, the land has been duly reclaimed during the period of five years or the extended period, the Revenue Assistant shall direct the Gaon Sabha to admit the Asami as Bhumidhar under section 73. The Asami on his admission as Bhumidhar shall be liable to pay such land revenue as shall be equal to 50 per cent of the rent calculated at the prevailing village rate of rent together with cesses and local rates, but he shall not be liable to pay any compensation.”

The Gaon Sabha has a right to admit a person as Assami. It is only at the end of five years that the Gaon Sabha shall report to the Revenue Assistant the extent to which reclamation has been made. The Revenue Assistant shall, after the enquiry either order the termination of the lease and the ejection if there has been no reclamation or extend the lease for another

period of two years. Where the land has been reclaimed during the period of five years or the extended period, the Revenue Assistant will direct the Gaon Sabha to admit an Assami as Bhumidhar. Clearly, the said provisions would have no application to the facts of this case as the petitioner was not lawfully admitted as an Assami. The initial possession of the petitioner to the land in question was itself illegal and contrary to the statutory provisions. The petitioner cannot claim to be Assami and consequently a Bhumidar.

24. There is no infirmity in the impugned order of the Financial Commissioner. There is no merit in the petition. The petition is accordingly dismissed.

JAYANT NATH, J.

JANUARY 31, 2020
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