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

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Date of decision: 04.02.2020

+ W.P.(C) 1517/2015

GAON SABHA BIJWASAN

..... Petitioner

Through

Mr.Satyakam, ASC, GNCTD with
Mr.Anuj Aggarwal, Adv.

versus

SH.AJAY RALHAN

..... Respondent

Through

Mr.Jayant Mehta, Mr.Pawan Sharma
& Mr.Anuj Shah, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. This writ petition has been filed by the petitioner impugning the order dated 31.05.2011 passed by the Financial Commissioner in Revision Petition No.68/2010.
2. The case of the petitioner is that pursuant to the written report of the halqa patwari dated 11.03.2000 proceedings were initiated against the respondent under Section 81 of The Delhi Land Reforms Act, 1954 ("DLR Act") regarding the land of the respondent situated in the revenue estate of Village Bijwasan which was allegedly converted into non-agriculture use by constructing a house. The Sub-Divisional Magistrate (SDM) passed a conditional order dated 19.03.2001 directing the respondent to convert back the suit land into agricultural purposes. The said site was inspected again and a fresh report was called from Tehsildar (Vasant Vihar). The SDM/Revenue Assistant before whom the proceedings under Section 81 of

the DLR Act were initiated, dropped the proceedings noting that the construction raised by the respondent is as per the plan sanctioned by the Municipal Corporation of Delhi (MCD) and as per the report dated 30.07.2001 submitted by the Tehsildar, there is no violation of Section 81 of the DLR Act.

3. The Gaon Sabha preferred an appeal against order dated 05.11.2001 before the Deputy Commissioner. The Deputy Commissioner dismissed the said appeal vide order dated 17.12.2008. A revision petition in this regard was filed before the Financial Commissioner challenging order dated 17.12.2008 which was also dismissed on 31.05.2011 (the impugned order).

4. I have heard learned counsel for the parties. Learned counsel for the petitioner has vehemently urged that the reports put up before the Revenue Assistant/SDM are incorrect reports as the photographs demonstrate that a large residential house has been constructed. It has also been submitted that there is also complete absence of agriculture use. Hence, it is pleaded that the proceedings have been rightfully initiated under Section 81 of the DLR Act. It is pleaded that the impugned orders dated 05.11.2001, 17.12.2008 and 31.05.2011 passed by the SDM, Vasant Vihar, Collector/Dy. Commissioner (S.W.) and Financial Commissioner, respectively have been passed wrongly.

5. Learned counsel appearing for the respondent, however, submits that a finding of fact has been recorded by the three functionaries who are the appropriate authorities to adjudicate the petition under Section 81 of the DLR Act. The findings of fact are that there is no violation of the provisions of the DLR Act and no proceedings can be initiated under Section 81 of the DLR Act as the property is being predominantly used as agricultural land

mainly for plantation of vegetables and flowers. In this regard, reliance is placed on the judgment of the Division Bench of this Court in ***Randhir Singh Vs. Gaon Sabha Maidangarhi (2014) 210 DLT 1***. Reliance is also placed on the judgment of the Division Bench of this Court in the case of ***Bihari Lal & Ors. Vs. Union of India, Etc. AIR 1979 Del 84***.

6. Learned counsel also places reliance on the judgment of the Division Bench of this Court in the case of ***Gaon Sabha Samhalka Vs. R.N. Sahni & Ors. ILR (2004) 2 Del 128*** to contend that the plea now raised by the petitioner is barred by limitation. As per the aforesaid judgment, the period of limitation is three years from the actual date of unlawful use of land. In the present case, the plan was sanctioned by the MCD in 1989. In this regard, a notice was also issued. It is urged that in terms of the judgment of the Division Bench of this Court, limitation period commences from 1989 and the claim is barred by limitation.

7. A perusal of the order of the Revenue Assistant shows that a fresh report was submitted on 30.07.2001 which stated that there is no violation of Section 81 of the DLR Act and based on the aforesaid report, proceedings were dropped.

The Appellate Authority, namely, the Collector, dismissed the appeal vide order dated 17.12.2008. The Collector noted that the Halqa Patwari was examined by the Gaon Sabha counsel to determine as to whether the Bhoomidar was residing in the dwelling unit. As per the report which was noted in the said order, a small portion of the said land was being used for dwelling unit while major portion had been put to agricultural use. The Tehsildar was also directed to inspect the site. A report dated 03.11.2008 was also filed. The report revealed that the land is used for agricultural

purposes and vegetables were grown at the said land. The authority also noted that permission for construction of the farmhouse was obtained from MCD. It was also noted that the Gaon Sabha had no objection to the present course of action. The appeal was dismissed.

The Financial Commissioner also accepted the aforesaid judicial orders. It factually follows that three functionaries based on the reports have recorded a finding of fact that a small dwelling unit exists in the area and substantially the property is being used for vegetable & flowers.

8. I may also look at the judgment of the Division Bench of this Court in the case of ***Randhir Singh vs. Gaon Sabha Maidangarhi (supra)***. In that case, the Division Bench held as follows:-

“8. A careful perusal of the aforesaid provisions would show that though a dwelling house erected on the land would amount to improvement in terms of sub-section (12) of Section 3 and improvement is allowed under Section 22 of the Act, subject, of course, to the provisions of Section 26 thereof, such construction must necessarily be for the purposes connected with agriculture, horticulture or animal husbandry, including pisciculture and poultry farming. In our opinion, the Act does not permit construction of a dwelling house or any other construction, on the whole of the land held by a *Bhumidar* or *Asami*. The dominant use of the land, even after improvements, must be for agriculture, horticulture or animal husbandry. The construction of the house can be only incidental to the prescribed dominant use of the land. If no activity connected with agriculture, horticulture or animal husbandry is undertaken and the whole of the land is used solely for a residence, such use, in our opinion, does not amount to an improvement permitted by the Act and would render the *Bhumidar* or *Asami*, as the case may be, liable to ejectment on the suit of the Gaon Sabha or the land holder, as the case may be.”

9. Reference may also be had to another judgment of the Division Bench of this Court in the case of *Bihari Lal & Ors. vs. Union Of India, Etc.* (*supra*) where the Court held as follows:-

“6. But the mere construction of a building on every agricultural land does not convert it into non-agricultural land. In section 3(13) of the Delhi Land Reforms Act, 1954 land is defined to include land occupied for purposes connected with agriculture and includes buildings appurtenant thereto. In fact, under section 3(12) a dwelling house erected on the holding by the tenure-holder is regarded as an improvement. Similarly, a tubewell or well is also regarded as an improvement. Shri Lal has not, therefore, succeeded in showing that this land was not agricultural land merely because a house and a tube-well at one time existed on it.”

10. Clearly, in view of the aforesaid judgments, the legal position that follows is that construction of a house is permissible provided the dominant use of the land even after improvements like construction of house, must be agriculture, horticulture etc. The reports indicate that use of the land is predominately agricultural. In my view, at this stage it would not be appropriate for this Court to go into evidence like photographs etc., to disturb the findings of the facts which have been recorded by all the three functionaries. The findings of fact recorded are a plausible view. There is no infirmity in the impugned order.

11. Apart from the above, I may also note the limitation period is of three years prescribed for commencement of eviction proceedings under Section 81 of the DLR Act.

12. Reference may be had to entry 17 of First Schedule to the DLR Act that reads as follows:-

Sl.	Section	Description of	Period of	Time from	Proper	Court of	Court of
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No.	of the Act	the suit application and other proceedings	limitation	which period begins	Court fees	original jurisdiction	1 st Appeal	2 nd Appeal
17	81	(i) Suit for ejectment of Bhumidhar or Asami and for damages under sub-section (1)	Three years	From the date of unlawful use of the land	As in the Court Fees Act, 1870	Revenue Assistant	Deputy Commissioner	..]
		(ii) Proceedings under sub-section(2)	Three years or one year from the date of passing of the Delhi Land Reforms (Amendment) Act, 1965, whichever period expires later	-do-	Nil.	-do-	-do-	...]

Therefore, in view of the aforesaid provision of the DLR Act, a suit for ejectment filed after three years from the date of unlawful use of the land is barred by limitation.

13. The Division Bench of this Court in ***Gaon Sabha Samhalka vs. R.N.Sahni & Ors. (supra)*** noted the commencement of cause of action as follows:-

“21. It is, therefore, clear that where Parliament intended knowledge to be the basis upon which time is to commence for the purposes of reckoning limitation, the Statute has enacted it to be so. This consider the “knowledge” based construction canvassed by Mr. Shali, in respect of Entry 17(ii).

22. So far as the argument of an interpretation based on the objects, or purpose of the enactment is concerned, it is settled law that where the words of a statute are plain, there can be no

recourse to external aids. Hence the plain meaning of the expression “use” in Entry 17 has to be applied. Consequently, the limitation (for taking action) commenced in the present case at least from 1988, when the use of the lands had changed. The proceedings were started on 29/01/1993, admittedly beyond the period of three years.

23. The issue can be viewed from another perspective. The power to initiate proceedings under Section 81(2) for ejectment is regulated by express terms of the enactment. One such express term is the limitation placed upon the power, namely, the period within which it can be exercised. Such limitation is not merely akin to statute or a provision that prescribes a period of limitation — it also trenches upon the very exercise of power. Having not used the power within the parameters prescribed by the statute, it is not open to the authority, to wit, the Collector/Additional Collector to take recourse to it beyond the conditions imposed by law.

24. It may be observed that the Supreme Court has held that while interpreting a provision in a statute prescribing a time limit for initiation of proceedings, considerations of equity and hardship are out of place.

25. In view of the above discussion, inescapable conclusion is that the period of limitation prescribed by entry 17 in the first Schedule to the Delhi Land Reforms Act, 1954 is the actual date of unlawful use of land and not the date of knowledge.

26. Coming to the issue of knowledge in the present case, it has to be noticed that the sanction for construction had admittedly been secured in 1974. Construction was carried out. The land was previously used for a monkey farm. Subsequently export of monkeys was banned in 1983. The property suffered damage in the wake of riots in November 1984. The respondent purchased the land in 1985 and the constructions situated on it. He proceeded to make further renovations and constructions which included a swimming pool in 1988-89. All these are documented in the records of the appellants themselves. Hence, the contention that the authorities were unaware of these

constructions prior to Halqa Patwari's report dated 14/08/1992 cannot be accepted. The existence of these structures is reflected in the Khasra Girdawari of the relevant year which are maintained by the authorities themselves. Therefore, the plea of Mr. Shali that the appellants came to know about the unlawful use of the land only on 14/08/1992 is also rejected."

14. In the present case, an admitted fact is that the construction was given sanction by the MCD in 1989 and the construction commenced thereafter. The completion certificate had been issued on 05.02.1999. A notice was also issued. It is manifest that construction was going on since 1989. In terms of the aforesaid judgment, cause of action had arisen for computation of the limitation period. Accordingly, the said proceedings initiated by the petitioner, itself are barred by limitation being beyond the period of 3 years from the date construction was carried out i.e. 1989 onwards.

15. It is also a matter of fact that MCD has sanctioned the building plan and granted completion certificate to the respondent for the construction carried out.

16. There is no merit in the present petition. The same is, accordingly, dismissed.

JAYANT NATH, J.

FEBRUARY 04, 2020/aa