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

% **Date of decision: 30th November, 2021**

+ **W.P.(C) 12038/2019, CM APPL. 49241/2019**

SMT. SUSHMA KAPOOR

..... Petitioner

Through: Mr. Rajesh Yadav, Sr. Adv. with Ms.
Ruchira Arora, Mr. Dhananjay
Mehlawat, Advs.

Versus

GOVERNMENT OF NCT OF DELHI AND ANR. Respondents

Through: Ms. Shobhana Takiar, ASC for
respondent No.1.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. Heard learned counsel for parties.
2. The petitioner is aggrieved by the initiation of proceedings by the respondents in purported exercise of powers conferred by Section 81 of the Delhi Land Reforms Act, 1954¹. It appears from the record that the Halqua Patwari submitted a report on 16 April 2019 asserting that agricultural land comprised in Khasra No.601/2 Min situated in the revenue estate of Village Gadaipur, New Delhi was being used for non-agricultural purposes. The allegation essentially was that certain unauthorized constructions were being raised upon agricultural land. On receipt of that report, the Sub

¹ Act

Divisional Magistrate by an order of 23 April 2019 issued a “Restraintment Order” against the petitioner and directed parties to desist from carrying on further construction on the land in question. On 29 April 2019 a direction was issued for the making of a conditional order. The Revenue Assistant by a communication of 17 May 2019 passed what is described to be a “Conditional Decree” holding that he was satisfied that the land was being put to non-agricultural use and therefore called upon the petitioner to take steps that the same is converted and restored back to its agricultural character within a period of 3 months. It is in the aforesaid backdrop that the instant writ petition came to be filed with the petitioner challenging the orders of 29 April 2019 and 17 May 2019.

3. The challenge to the proceeding is principally based on the ground of Revenue Assistant lacking jurisdiction to invoke the provisions of the Act since the land in question had come to be urbanised and would thus cease to fall within the definition of “land” as employed in the Act. The submission essentially proceeds on the basis of the uncontroverted fact that the property stands comprised and covered in a notification dated 18 June 2013 issued under Section 11-A of the Delhi Development Act, 1957² and noting that the area would fall in a “Low Density Residential Area” in the concerned urban extension.

4. According to Mr. Yadav, learned senior counsel appearing for the petitioner, once the land came to be covered in the notification aforementioned in recognition of it having become urbanised and falling within a Low Density Residential Area, proceedings under the Act could

² DDA Act

not have been initiated and would be clearly barred. It was submitted that while the petitioners dispute the allegation that constructions were being made since according to them only certain repair work was being undertaken, even if one were to proceed on the basis of that allegation being true, that would not invest the revenue authorities with jurisdiction to either initiate proceedings under Section 81 of the Act or pass orders of restraint. Mr. Yadav, learned senior counsel, submitted that while land falling within an urbanised conglomeration and coming within the purview of the Delhi Municipal Corporation Act, 1957³ or the DDA Act may require parties obtaining requisite permissions from competent authorities under those enactments, that would not confer any authority or right upon the Revenue Assistant to initiate proceedings under Section 81 or to issue to an order of restraint. In any case, Mr. Yadav submitted that the issue raised in this petition is no longer res integra and stands conclusively settled in light of the decision of this Court rendered in **Sanraj Farms Private Limited Vs. Charan Singh & Another**⁴.

5. Countering the aforesaid submissions, Ms. Takiar, learned counsel appearing for the respondents, has placed reliance upon a Circular of 03 July, 2013 on the basis of which it was contended that even if the land were not agricultural or fell in an urban extension, if reports of unauthorized constructions being raised is received, the revenue authorities are duty bound to intervene and to enquire whether constructions were being raised with due permission and requisite sanction.

³ DMC Act

⁴ 2019 SCC OnLine Del 10741

6. It becomes pertinent to note at the outset that the question of whether proceedings under the Act can be initiated in respect of land that falls within a Low Density Residential Area squarely arose and came to be answered in **Sanraj Farms**. The learned Judge after considering the relevant provisions of the Act and the decisions rendered by this Court with respect to land which could be subjected to the provisions of the Act held:-

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.

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.

7. The Court further takes note of the consistent line taken in the body of precedents on this subject starting from the decision of the Division Bench in **Smt. Indu Khorana Vs. Gaon Sabha**⁵ and the subsequent decisions which were noticed in **Sanraj Farms** which have explained the concept of "land" as liable to be understood and interpreted under the provisions of the Act. The ratio of those decisions with respect to the applicability of the Act must be recognized to be that land in order to be made subject to proceeding under the Act must answer to the description as

⁵ W.P. (C) 4143/2003 decided on 26 March 2010

set forth in the Section 3(13) of the Act. As would be manifest from a reading of Section 3(13) of the Act, it is only land held or occupied for purposes connected with agriculture, pisciculture, horticulture, animal husbandry or poultry farming which could be subjected to proceedings under the Act. The decisions noted above have proceeded further to hold that once land has become urbanized and thus found to have been put to a use or purpose other than those mentioned above, it would clearly fall outside the purview and ambit of the Act. The judgments of the Court in unequivocal terms hold that once the property ceases to answer to the description of land as defined under the Act, proceedings can neither be initiated and if commenced must abate.

8. The provisions of Section 3(13) of the Act were interpreted similarly by the Supreme Court in **Harpal Singh Vs. Ashok Kumar**⁶ where the Court held: -

“5.....The position of law which has been consistently followed is that where the land has not been used for any purpose contemplated under the Land Reforms Act and has been built upon, it would cease to be agricultural land. Once agricultural land loses its basic character and has been converted into authorised/unauthorised colonies by dividing it into plots, disputes of plot holders cannot be decided by the Revenue Authorities and would have to be resolved by the civil court. The bar under Section 185 would not be attracted.”

9. Once the fact of the land being covered under the notification of 18 June 2013 and covered under a Low Density Residential Area is admitted to the respondents, it is manifest that the proceedings initiated under the Act cannot be sustained. The Court also fails to find any merit in the contention of Ms. Takiar that the revenue authorities would still be empowered to

⁶ (2018) 11 SCC 113

enquire whether constructions were being raised without the requisite permissions as contemplated under the DMC or DDA Acts. Those enactments incorporate sufficient measures for enquiry and enforcement and independently confer powers in connection therewith upon statutory authorities other than revenue officials.

10. The Circular of 03 July 2013 also cannot come to the rescue of the respondents nor can it sustain the impugned action since and as is fairly noted therein the principal focus of enforcement of the Act is to be placed upon the prevention of “*unauthorized colonization of agriculture land*”. That Circular cannot possibly be read as conferring authority on the Sub Divisional Magistrate or the Revenue Assistant to initiate proceedings under Section 81 of the Act even in respect of land which may fall outside the ambit and scope thereof.

11. Accordingly, for all the aforesaid reasons, this petition along with pending application shall stand allowed and the restraintment order dated 23rd April, 2019 as well as proceedings initiated in terms of the impugned order dated 29th April, 2019 shall stand quashed.

YASHWANT VARMA, J.
NOVEMBER 30, 2021/neha