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

Date of Decision: 24.12.2021

\+ **LPA 481/2021 & CM APPLs. 45571-72/2021**

SH. CHANDER BHAN DECEASED THR. HIS LRS & ORS. ..... Appellants

Through Mr.Sudhir Nandrajog, Sr.Advocate with Mr.Sunil Chauhan and Ms.Vatsala Chauhan, Advocates.

versus

FINANCIAL COMMISSIONER & ORS. ..... Respondents

Through Mr.Anjum Javed, ASC with Mr.Devendra Kumar, Adv. for R-1.

Mr.Rajesh Yadav, Sr. Adv. with Mr.V.P. Rana, Advocate for Private Respondents 2 to 21.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

CM APPL. 45572/2021 (exemption)

Allowed, subject to all just exceptions.

LPA 481/2021 & CM APPL. 45571/2021

1. The present appeal has been filed by the appellants challenging the judgment and order dated 30.11.2021 passed in W.P.(C) 6365/2019 dismissing the writ petition filed by the appellants herein

which in turn had challenged the order dated 04.04.2019 passed by the Financial Commissioner, Delhi.

2. The dispute between the parties arises out of a suit filed by the respondents under Section 84 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as 'DLR Act') in respect of the land bearing Khasra No.1196/1 (4-16) situated within the Revenue Estate of Village Karala, Delhi. The suit was filed by the respondents claiming that the respondents are the joint co-bhumidars of the above said land. They claimed that the land was allotted to them in the consolidation proceedings. It was further claimed that the respondent nos.2 to 21 were in possession of the said land, with respondent no. 2 staying on the said land. It was further claimed that while the respondent no.2 had gone to attend some Court proceedings in Jaipur, the appellants had forcibly and illegally encroached upon the land in question and started construction over it. When respondent no.2 came back from Jaipur on 27.04.1998, he came to know of the illegal encroachment. A police complaint was filed against the appellants and thereafter a suit for permanent and mandatory injunction was filed in a Civil Court, which was later withdrawn. The present suit under Section 84 of the DLR Act was thereafter filed.

3. In defence, the appellants claimed that the predecessor of the respondent nos.2 to 21 herein had sold the land to the appellants by way of an oral sale and put them in actual physical possession of the land in 1970. They further claimed that in the consolidation proceedings conducted in 1975-76, they were recorded as being in possession of the land. They further claimed that a General Power of

Attorney dated 06.01.1988 and a receipt of Rs.25,000/- was also executed by the erstwhile owner of the land in their favour. They claimed that as they were in continuous possession since 1970 or at least since 1988, the suit was barred by limitation.

4. The Revenue Assistant vide his order dated 15.01.2003 decreed the suit in favour of the respondents.

5. Aggrieved of the above order, the appellants preferred an appeal before the Deputy Commissioner, which was allowed vide order dated 24.10.2014.

6. The respondents being aggrieved of the above order, filed a Revision Petition before the learned Financial Commissioner, Delhi, which was allowed in their favour vide order dated 04.04.2019. The said order was challenged by the appellants in the writ petition, which has been dismissed vide the Impugned Order.

7. The learned senior counsel for the appellants contends that the learned Financial Commissioner as also the learned Single Judge have failed to appreciate that the suit filed by the respondents was barred by limitation having been filed beyond the period of limitation of three years. He submits that in defence to the said suit, the appellants were not to prove their title over land; their claim of being in continuous possession for more than three years prior to the filing of the Suit was enough.

8. Placing reliance on the copy of the list of 'Kayami', he submits that the names of the appellants appear as an occupier of the land during the consolidation proceedings conducted in 1975-76. He submits that therefore, the appellants were found to be in possession of

the land since 1975-76 and the suit filed beyond a period of three years was clearly barred by limitation.

9. On the other hand, the learned senior counsel for the respondent nos.2 to 21, who appears on advance notice, submits that no credence can be placed to the document filed as list of 'Kayami' with the appeal inasmuch as in the consolidation proceedings, it was the respondents who were put in possession of the land when the consolidation was closed. The appellants never objected or challenged the same. He submits that the respondents have been in possession of the land throughout.

10. We have considered the submissions made by the learned counsels for the parties.

11. The learned Financial Commissioner in his order dated 04.04.2019, on the claim of the appellants to be in the continuous possession of the land, has held as under:

> *"7. The Deputy Commissioner has relied upon the entry of "Scheme kabizan" in respect of suit property but said list was never recognized by the consolidation authorities as the land was never allotted to the Respondent no. 1 under section 21(1) of the Consolidation Act. The suit land stood allotted to the petitioners' right from the date of consolidation of year 1975-76 and this allotment was never challenged by the contesting Respondents on the basis of list of "Scheme kabizan". Petitioners have been in possession since then and the same was also reflected in "Khasra-Girdawari".*
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> *No "Khasra-Girdawari" of any year was placed by Respondents to prove their possession. No evidence was laid on record to prove possession over the land for more than 3 years, therefore, petition under section 84 of*

> *DLR Act was rightly allowed against Respondents. This legal aspect has completely been ignored by the Deputy Commissioner.*"

12. The learned Single Judge in his impugned order has also considered the record and has observed as under:

> *"6. Having perused the record, the Court notes that the petitioners do not rest their case on any part of the final consolidation scheme which may have recognised their proprietary rights over the premises in question. The writ petition also does not place on the record any final order of allotment that may have been made in favor of the petitioners upon the final consolidation scheme being published. The lists which are relied upon by the petitioners and which have been placed on the record have not been established to have been drawn after or as a consequence to the promulgation of the final consolidation scheme. The Financial Commissioner has lastly taken into consideration the fact that no "Khasra Girdawari" of any year was placed by the petitioners which may have established or recognised they being in possession of the premises in 1970. The Financial Commissioner has also found the case set up by the petitioner as being wholly suspect and unworthy of acceptance bearing in mind that they claimed to have been inducted in possession in 1970 and then placed reliance upon a power of attorney allegedly executed 17 years thereafter.*"

13. Admittedly, the appellants were unable to show any title to the land. As submitted by the learned senior counsel for the appellants, the claim of the appellants is to be considered as one of being in

continuous possession. For this, the only document relied upon by the learned senior counsel for the appellants is a list of 'Kayami'. The said document, however, is not accompanied by any other record of the consolidation proceedings. The claim of the respondent nos.2 to 21 that in such consolidation proceedings, they were, in fact, put in possession of the land, which was never challenged by the appellants, has in fact been accepted by the learned Financial Commissioner. The appellants have placed no document on record to rebut such finding.

14. In view of the above, the suit filed by the respondent no.2 to 21 under Section 84 of the DLR of the Act could not be said to be barred by limitation as the appellants have failed to prove their continuous possession of the land for a period prior to three years from the filing of the said suit.

15. Accordingly, we find no merit in the present appeal, the same along with the application is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

DECEMBER 24, 2021
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