



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

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Judgment reserved on: 17 December, 2021

Judgment pronounced on: 4 January, 2022

+ W.P.(C) 114/1994, CM APPLs. 179/94, 22340/2020, 24866/2020 & 1999/1999

SANT BABA GURMAIL SINGH & ANR. Petitioners

Through: Mr. J. P. Sengh, Sr. Adv. with Mr. C. Prakash, Ms. Manisha Mehta and Mr. R. L. Sinha, Advs.

versus

LT. GOVERNOR OF DELHI & ORS. Respondents

Through: Mr. Naushad Ahmed Khan, ASC(C), GNCTD with Mr. Zahid and Ms. Manisha Chauhan, Advs.

+ W.P.(C)3520/1994, CM APPLs. 21588/2020, 22341/2020, 22342/2020 & 6504/1994

SANT BABA GURMAIL SINGH Petitioner

Through: Mr. J. P. Sengh, Sr. Adv. with Mr. C. Prakash, Ms. Manisha Mehta and Mr. R. L. Sinha, Advs.

versus

GAON SABHA VILLAGE SIRASPUR & ORS. Respondents

Through: Mr. Naushad Ahmed Khan, ASC(C), GNCTD with Mr. Zahid and Ms. Manisha Chauhan, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

1. These two writ petitions were, with the consent of parties, taken up for hearing together. While Writ Petition No. 3520/1994 challenges the



order passed by the Financial Commissioner, Writ Petition No. 114/1994 assails an order passed by the Lieutenant Governor¹. Since the litigation itself has had a chequered history, it would be pertinent to notice the following essential facts.

A. BACKGROUND FACTS

2. The dispute itself centers around land admeasuring 57 bighas and 4 biswas comprised in khasra Nos. 401 (2-7), 402 (3-3), 403 (4-16), 404 (5-18), 405 (3-19), 406 (6-2), 407 (4-16), 408 (4-17), 409 (2-13), 410 (4-16), 411 (4-16), 412 (6-11), 413 (5-3), 414 (4-16) and 415/2 (1.00) situated in village Siraspur, North-West district of Delhi. Undisputedly this piece of land was originally owned by Sat Naraian, Narender Kumar and Dev Raj Kohli, who were the recorded landholders. The original landholders are stated to have sold this land to one Land Trade Corporation in terms of sale deeds dated 29 January and 5 March 1970. The petitioner on the other hand asserts being in cultivatory possession of this very land since 1977-78. It is additionally urged that the land was purchased by him from the original land holders in 1976-77 vide a registered sale deed of 2 April 1983 executed in his favour. These are disclosures that were made in proceedings initiated by the respondents and shall be referred to in the subsequent parts of this judgment. It has also come on the record that although Land Trade Corporation applied for mutation in its favour on the basis of the original sale deeds executed in January and March of 1970, that application was refused. The dispute leading to the present matter falling before this Court

¹ LG



emanates from an application dated 20 February 1982 filed by the petitioner seeking benefits envisaged under Section 85 of the Delhi Land Reforms Act, 1954². Section 85 relates to situations where claims of adverse possession may be raised by persons taking or retaining possession of land forming part of the holding of a bhumidhar, asami or the Gaon Sabha as the case may be. It proceeds on the premise that if the bhumidhar, asami or the Gaon Sabha fail to institute a suit for eviction as contemplated under Section 84 of the Act within the period of limitation prescribed, the occupant can claim rights by way of adverse possession and petition for being granted the status of a bhumidhar or asami.

3. The application under Section 85 as moved by the petitioner came to be rejected by the Revenue Assistant in terms of the order of 25 June 1983. The Revenue Assistant while rejecting the said application essentially took note of the fact that the khasra girdawari for the concerned years, namely, 1977-78, recorded the plots as falling in the category of “gairmumkin” and thus not being used for agricultural purposes. The Revenue Assistant further went on to observe that the petitioner had got his name entered on the revenue records as an encroacher even though the records would suggest otherwise. He ultimately went on to record the following conclusions:-

“In view of the above facts, and the arguments heard, I have come to the conclusion that the land in question remains in the shape of “Parti” and not being cultivated by the applicant which is in contravention of u/s 81 of DLR Act. I, therefore, do hereby dismissed the suit u/s 85 of DLR Act. Subsequently

² the Act



suit land is vested in the gaon sabha u/s 81 DLR Act. A copy of this order is to be sent to Teh. (Delhi) with the direction to hand over the possession of the suit land to the gaon sabha Siras Pur, Delhi. Announced in open court.”

4. Aggrieved by the aforesaid decision, the petitioner preferred an appeal before the Additional Collector. That appeal came to be allowed on 26 September 1983 and the matter remanded for fresh consideration. In November 1984, the anti Sikh riots took place in Delhi and it was the case of the petitioner that the gurdwara which was built upon the land in dispute was also attacked and looted. It is asserted that it was during this period that the original sale deed came to be destroyed in a fire, numerous sewadars killed by rioters and the petitioner constricted from undertaking cultivation over the land. On the record is a report of the Delhi Development Authority³ of 3 January 1994 which appears to lend credence to the fact of an existing gurdwara having been burnt and destroyed during those riots. During the pendency of proceedings on remand to the Revenue Assistant, the respondents proceeded to issue an undated notice purporting to be under Section 81(2) of the Act. According to the notice, the petitioner was required to appear before the Court on 30 October 1985 to show cause why action should not be taken against him under the said provision. Since the contents of that notice would have some bearing on the questions raised, the same is extracted hereinbelow: -

“NOTICE UNDER SECTION 81(2) OF THE D.L.R. ACT, 1954

1. Whereas it has been brought to my notice that the land described in the schedule below has been used for non-agricultural purposes and in

³ DDA



contravention of Chapter III (H) of the D.L.R. Act, 1954 as amended from time to time.

2. And whereas action under Section 81(2) of the D.L.R. Act, 1954 as amended from time to time is proposed to be taken against you.

3. You should, therefore, appear in this Court on 30/10/85 at 10.00 A.M. to show cause why action should not be taken against you under section 81(2) of DLR Act.”

5. In the meanwhile, the petitioner appears to have applied for mutation of his name in the revenue record in November 1985. The aforesaid application appears to have been made in the backdrop of the order of the Revenue Assistant directing the vesting of the land in the Gaon Sabha coming to be set aside by the Additional Collector and the matter remanded for fresh consideration.

6. During the pendency of the proceedings upon remand and on the respondents finding that numerous plots had been carved out and sold to individuals, a demolition exercise is stated to have been undertaken in December 1985. In the course of removal of those encroachments, the petitioner is stated to have been dispossessed on 29 December 1985. It becomes relevant to note that the respondents have failed to disclose or draw the attention of the Court to any statutory proceedings or orders passed therein pursuant to which the demolition and removal of encroachments was undertaken. It becomes pertinent to highlight the undisputed fact that in December 1985, the order vesting the land in the Gaon Sabha did not subsist having been set aside in appeal by the Additional Collector.



7. The respondents upon taking possession of the land and acting upon a resolution passed by the Gaon Sabha in 1985 are stated to have proceeded to allot the land in question to the Department of Health Services, Delhi Administration on 13 February 1986. The possession of the land is also stated to have been handed over to the Department of Health Services accordingly. It has also come on the record that in course of removal of encroachments and the handing over of possession to the Department of Health, 58 encroachers were identified on the spot and were ultimately also allotted alternative sites of land belonging to the Gaon Sabha.

8. In the meanwhile, the proceedings before the Revenue Assistant came to be finally heard and decided on 10 April 1986 against the petitioner. Significantly, the Revenue Assistant while proceeding to hold against the petitioner yet again, observed as follows: -

“Having record to title and circumstances of the case in view I am of the considered view that the order passed by my learned predecessor on 25.6.83 is in accordance with the facts on record, spots and law and the same is hereby confirmed.”

9. As is evident from the aforesaid extract of the order passed by the Revenue Assistant, the order of 25 June 1983 was found to be justified and was “*confirmed*” notwithstanding the fact that the same had already been set aside by the Additional Collector in terms of the order 26 September 1983. This order was thereafter appealed by the petitioner before the Additional Collector. The petitioner thereafter filed a spate of writ petitions before this Court being Writ Petition Nos. 689/85, 504/86 and 1624/86



challenging the order of 10 April 1986 as also the action of the respondents who had proceeded to dispossess the petitioners.

10. Those writ petitions came to be dismissed as per the following details: -

- (a) Writ Petition No. 689/1985-The Court held that the Petitioner should first ventilate his grievance before the respondents and if there be any refusal, he would be at liberty to take such action as may be available in law. The petition was accordingly dismissed.
- (b) Writ Petition No. 504/1986- This petition was dismissed as withdrawn with liberty to approach the revenue authorities for appropriate relief.
- (c) Writ Petition No. 1624/1986- The petition was dismissed with liberty to the petitioner to invoke the alternative remedies available under the Act.
- (d) Special Leave Petition bearing No. 15089 of 1986- The special leave petition taken against the aforesaid order was dismissed.

B. ORIGINAL ORDER OF LG DT. 21 MAY 1991

11. It becomes pertinent to note that during the pendency of the proceedings before the Additional Collector, the petitioner appears to have parallelly made a representation before the LG in February 1990 for redressal of his grievances. The aforesaid representation was taken cognizance of by the then LG who on 7 December 1990 passed the following order: -

“The case of Baba Gurmail Singh of Gurdwara Hargobind Sar at Village Nangli Poona was discussed with D.C.

W.P. (C) 114/1994 & 3520/1994

Page 7 of 60



The Gurdwara had been claiming that they had purchased agricultural land for the Gurdwara in the village. The land in question was vested with the Gaon Sabha on the ground that agricultural land was not being put to agricultural use. There is an appeal against this decision of the SDM pending before the ADM. As a result of disturbances in November 1984, their activities suffered. The Gurdwara was also attacked.

It was felt that if the title of the Gurdwara over the agricultural land purchased was clear, then it would only be appropriate to restore this land for the Gurdwara without awaiting the outcome of the proceedings in the Court of ADM. This could be done by formally allotting this Gaon Sabha land to the Gurdwara. This land on which the Gurdwara has been built has vested in the Gaon Sabha only on the technical ground that this is not being put to agricultural use.”

12. On the basis of the aforesaid order, the ADM on 12 December 1990 proceeded to draw up a detailed report. The relevant extracts of that report are reproduced hereinbelow: -

“3. The undersigned had discussion with Sant Gurmail Singh, who was called for with record in his possession about the ownership of the land. It is revealed that the land has been purchased by him from S/Shri Sat Narain and Narinder Kumar way back in 1976-77 and since then he is in possession of that land and cultivating. the same is proved by producing copy of khasra girdawri from the year 1977-78 to 1983-84. Somehow these girdawari entries have not been relied upon by Ld. SDM/RA Sant Ji explained that he could not get registration of purchase of land done as the original owners of the land were not available in Delhi as they have moved out to Bombay as per statement of Sant Ji and also indicated through unserved notice on record. However, the sale deeds were registered on 2-4-1983 when the owners were available in Delhi. As the original owners were not available Sant ji tried to get the land recorded in his favour by getting declared himself of the said land which was in his possession for more than three years continuously as per land record. He has produced copies of sale deeds duly registered which is placed on file. Purchase of the land by Sant ji is not in doubt. The Land in question was not belonging to Gaon Sabha initially but to Shri Sat Narain and Narinder Kumar, who sold the same to Sant ji. He has utilised the part of this land for Gurdwara and residential accommodation and cultivating left over areas for meeting the requirement food grains of the Lunger being run by the Gurdwara. The land has come in the name of the Gaon Sabha only after vesting the same by SDM on 25-6-1983. Subsequently it has also been allotted to Directorate of Health Services on



lease of 99 years on 13-2-1986. However, Sant Baba Gurmail Singh and Gurdwara Hargobindsar are still in possession of the same land.”

13. Another report of 22 January 1991 was drawn up by the ADM cum Director (Panchayats). The ultimate conclusion as set forth in that report are reproduced hereinbelow: -

“In the same order, it has been mentioned that “this could be done by formally allotting the land to Gurdwara”. In my opinion it is submitted that if the title of the land is clear that the land was purchased by Sant Gurmail Singh for the use of Gurdwara then this land which has also been included in the allotment letter issued to Directorate of Health Services out of khasra numbers 401(2-7), 402(3-3), 404(5-19), 404(5-18), 405(3-19), 406(7-2), 407(4-16), 408(4-17), 409(2-13), 410(4-16), 411(4-16), 412(6-11), 413(5-3), 414(4-16), 415/2(1-0), 529(2-19), 531(4-18), 532(5-14), 533(3.0), 521(4-16), 522(4-16), 528(4-16) should be deleted in the first instance and then this land could be restored to Gurdwara. Sant Baba Gurmail Singh has never requested to the Hon’ble Lt. Governor for the allotment of these khasra numbers to Gurdwara. He has pleaded before the Hon’ble Lt. Governor that this land belong to Gurdwara and vested in Gaon Sabha on technical ground. Hence he requested to reconsider the order and restore the land to Gurdwara and review the orders of allotment to the Directorate of Health Services, Delhi Administration.”

14. The aforesaid reports and other relevant material were placed for the approval of the Deputy Commissioner who on 23 January 1991 proceeded to recommend that the name of the petitioner may be restored in the relevant revenue record and the allotment as made in favour of the Directorate of Health Services be formally cancelled. The LG on the basis of the aforementioned reports proceeded to pass a detailed order of 21 May 1991 which reads thus: -

“I have gone through the file. Sant Gurmail Singh and the members of the managing committee from Gurdwara Hargobindsar have also met me and represented their case.

2. There does not seem to be any dispute that the land in question was bought by Sant Gurmail Singh for the Gurdawara. Sant Gurmail Singh, I understand,



has no family and though the land may have been purchased in his name, I am satisfied that it was purchased for the Gurdwara. This land was vested in the Gaon Sabha in 1983 for the technical reasons that it was not being put to agricultural use.

After its vesting in the Gaon Sabha, it seems from the note of J.S. (M) that this land was being subjected to unauthorized colonisation and the encroachments were removed on the directions of the then Lt. Governor who also decided that it may be allotted for a 100-bedded hospital. While taking the decision to allot the land for the hospital, the back ground of this land was presumably not known and taken into account. The main Gurdwara was burnt in November 1984 and some savadars killed. While this may not have a direct technical connection with this land, there is an emotional and religious linkage for the sikhs who are attached to the Gurdwara.

3. Given the background of the case and the need to heal the wounds of November 1984. It would only be in the fitness of things that this land be restored to the Gurdwara forthwith without awaiting for the outcome of the judicial proceedings and going in to the legal merits of the claim against the vesting of the land in the Gaon Sabha. I also understand that my predecessor had taken the decision to restore the land to the Gurdwara and have also announced it. It would not be appropriate to now consider going back on his public commitment on an emotive issue like this. Accordingly, the allotment to the hospital is cancelled and the land is allotted to the Gurdwara.

4. The 100-bed hospital can be built at some suitable location for which either Gaon Sabha land could be provided or land even acquired. Personally, I feel that it may be desirable to shift this hospital to a larger site at Narela where major developments are taking place through the DSIDC and the DDA. In the long run, Narela would need a full-fledged hospital. At Narela it may, therefore, be desirable to have enough land and plan the hospital in such a way that though in the first stage a 100 bed hospital is created it could in due course be expended in a modular fashion.

After taking action as per para 3 above, D.C may return the medical department file to them adding a copy of this note for further action as per para 4.”

C. EVENTS POST 21 MAY 1991

15. Based on the aforesaid order of the LG, a formal order for cancellation of the allotment made in favour of the Directorate of Health Services came to be passed on 11 June 1991. The petitioner has further

W.P. (C) 114/1994 & 3520/1994



asserted that the respondents in any case and in the meanwhile, had decided to shift the hospital to Rohini as would be evident from the newspaper extracts which have been placed on the record and indicate that a foundation stone laying ceremony was held on 19 November, 1991 and which was also graced by the then Hon'ble Prime Minister.

16. After the passing of the order by the LG on 21 May 1991 and the allotment in favour of the Department of Health coming to be cancelled, Writ Petition No. 2036/1991 came to be preferred by one Sh. Vijay Kumar questioning the order passed by the LG on 21 May 1991 and the restoration of the land in favour of the petitioner. Taking into account the various disputed questions of fact which appeared to arise, the Court by its order of 23 March 1992 remitted the matter for the consideration of the LG leaving all issues of facts and law open to be decided in those proceedings.

17. Upon the drawl of proceedings by the LG pursuant to the aforesaid order, a report from the Financial Commissioner appears to have been called for. The Financial Commissioner took note of the fact that the records established that the original land holders had sold the land by way of registered sale deeds to Land Trade Corporation in January and March 1970 itself and thus no right inhered in them to make a further disposition of the same land in favour of the petitioner in April 1983. The Financial Commissioner also doubted the veracity of the copies of the sale deed which was presented by the petitioner noting that it appeared to have been set out on stamp paper valued at Rs.2 and that neither ad valorem stamp duty appeared to have been paid nor did the copies of the sale deed bear the



signatures of the Sub Registrar. On the basis of the aforesaid conclusions, the Financial Commissioner proceeded to record that the title of the petitioner over the land on the basis of the sale deeds executed could not be established. The Financial Commissioner also took note of the vacillating stand struck by the petitioner who while initially asserting that he was in adverse possession of the property, had thereafter turned around and asserted being the lawful owner thereof on the basis of the sale deed which was alleged to have been executed. Based on the above, the Financial Commissioner came to conclude that the claim of the petitioner lacked credibility and was not liable to be countenanced.

18. Once the proceedings before the LG commenced, the petitioner moved an application for summoning the records relating to the appeal papers as filed before the Additional Collector who was seized of the challenge laid by the petitioner to the order of 10 April 1986. This application came to be rejected on 9 November 1992 with the LG noting that since proceedings had been drawn solely on the basis of the directions issued by this Court, there arose no occasion to call for the records of “*extraneous*” proceedings. The LG after affording opportunity of hearing to all respective parties, thereafter, proceeded to pass the impugned order of 22 November 1993 recalling the earlier order of 21 May 1991 and restoring the allotment made in favour of the Directorate of Health Services.

19. A mere four days later, the Additional Collector before whom the statutory appeal was pending and papers whereof were refused to be summoned or perused by the LG, came to allow the same and accept the W.P. (C) 114/1994 & 3520/1994



challenge of the petitioner to the order of 10 April 1986. While noticing the order of the LG of 21 May 1991, the authority also came to hold and note that the Revenue Assistant had failed to follow the procedure as prescribed under Section 81 of the Act. The Additional Collector held that Section 81 mandates the passing of a conditional decree with the offender being accorded an opportunity to restore the land to its original character and status within a period of three months from the passing of the original order. It was noted that no such conditional decree was drawn, nor a warrant of possession even issued. The authority proceeded to hold that the failure to have followed the mandatory procedure as prescribed under Section 81 of the Act, clearly invalidated the ultimate order passed by the Revenue Assistant. Upon taking note of the position on facts as it existed, the Additional Collector ultimately held that there existed no justification to remand the matter since no encroachments could be said to exist in light of the order of the LG of 21 May 1991.

20. During the pendency of Writ Petition No.114/1994 before this Court, the Gaon Sabha preferred an appeal before the Financial Commissioner assailing the order aforementioned. That appeal came to be allowed with the Financial Commissioner noting that in light of the change in situation which had been brought about by virtue of the order of the LG of 22 November 1993, the order of the Additional Collector which rested solely on the earlier order of the LG of 21 May 1991 could not possibly be sustained. It is this order which forms subject matter of challenge of Writ Petition No. 3520/1994.



D. PRELIMINARY RESERVATIONS

21. Before proceeding to notice the rival contentions advanced before this Court, it would be apposite to highlight the following important caveats in respect of the orders passed by the LG and the Financial Commissioner. The LG in terms of the impugned order of 22 November 1993 has proceeded on the premise that the orders of 25 June 1983 and 10 April 1986 had attained finality. This since he noted that the appeal filed before the Additional Collector stood dismissed on 14 October 1991. It however appears that it was not brought to the notice of the LG that the appeal before that authority had not been dismissed on merits but lay dismissed in default. It was also perhaps not brought to the notice of the LG that an application for restoration and recall of that order had already been moved on 23 October 1992 and in fact the order dismissing the appeal for want of prosecution had already been recalled on 5 January 1993. At least these facts which are admittedly borne out from the record have not been noticed by the LG while proceeding to pass the order impugned herein. It is thus evident that on 22 November 1993 when the LG proceeded to pass the impugned order, the appeal preferred before the Additional Collector stood revived and was pending on its board. The recital to the contrary as appearing in the order of the LG is, thus, factually incorrect.

22. Insofar as the order of the Financial Commissioner of 25 March 1994 is concerned, one of the principal reasons which appear to have weighed with that authority was its understanding that the order of the Additional W.P. (C) 114/1994 & 3520/1994



Collector of 26 November 1993 rested solely on the order of the LG of 21 May 1991. However, and as would be evident from a reading of that order, while the Additional Collector did take cognizance of the order of the LG of 21 May 1991, he had also additionally tested the validity of the orders passed by the Revenue Assistant on the anvil of Section 81 of the Act. The relevant extracts of that decision of the Financial Commissioner as entered on merits are reproduced hereinbelow: -

“3. I find that the lengthy arguments, addressed by both the counsels, are not germane to the determination of the points, involved in this case, that being so, I need not discuss those submissions and proceed to dispose of this appeal on its facts and merits. The determination of the claim of the respondent under section 85 of the Act has wrongly been deferred merely on the ground of the alleged purchase of the land by the respondent. It has come on record that the suit land had already been transferred by its recorded bhumidhara to M/s Land Trade Corporation in the Year 1970. Thereafter, any transfer by the said bhumidhars to the respondent for the second time carried a question mark and ought not to have been given any credence. Be that as it may, the court below has not given any finding in favour of the respondent under section 85 of the Act and the respondent has not come forward to assail the said order, as he is satisfied with the entries in this name. I, therefore, leave the matter under section 85 as it is.

4. Coming to the second issue of the proceedings under section 81 of the Act, I find that the lower court's order has been based mainly upon the order of the Lt.Governor dated 21.05.91 whereby the suit land had been ordered to be restored to the respondent, despite all the proceedings already taken. The situation has entirely changed by the order dated 22.11.93, now passed by the Lt.Governor, whereby the earlier order in favour of the respondent has been reversed. It appears that the changed situation was not in the knowledge of the learned Additional Collector at the time of passing of the impugned order, which has been passed through four days after the order of the Lt.Governor. It is also gathered from the pleadings, that the respondent herein has been changing his stands. At one stage, bhumidhari is claimed by adverse possession. At a latter stage, he claims to have purchased the said land from the



same persons and takes the plea that documents had been burnt in the 1984 riots. However, this issue has been determined in the earlier part of this order and need no repetition.

5. To conclude, I hold that in view of the changed situation, the impugned order does not hold good and it is liable to be set aside. I order accordingly.”

However, this clearly appears to be an incorrect appreciation of the order passed by the Additional Collector as would be evident from the following findings which came to be returned and recorded by that authority insofar as the validity of proceedings when tested on the pedestal of the provisions made in Section 81 is concerned. The relevant parts of the order of the Additional Collector are extracted hereinbelow: -

“..... 7.2 Now, coming to the merits of the case, it may be mentioned that after going through the memorandum of appeal, additional submissions and additional evidences/documents made by the parties, the application made by the objectors for impleading them as parties, the written arguments made by the parties, lower court records and the case file and after the arguments of the parties, my understanding of this case is that two issues are involved in this case. The first issue relates to declaration of the appellant as bhumidar u/s 85 of the Act in respect of the suit land on the basis of his adverse, cultivatory possession of the suit land.

..... for more than 3 years, and the second issue relates to vesting of the suit land into Gaon Sabha u/s 81 of the Act for using the land for non-agricultural purposes. The first issue has become infructuous at this stage, as the suit land has been subsequently purchased by the appellant and that the suit land has also been got mutated in his name. Regarding the second issue, i.e. vesting of the suit land in Gaon sabha it is stated that Shri C.P. Tripathi, the Ld. SDM/RA while deciding the case u/s 85 dismissed the application of the appellant for declaration of bhumidari rights on the ground that the land was not used for agricultural purposes and instead vested the land suo-moto in Gaon sabha. It is opined that while that intention of the Ld. RA was to vest the land u/s 81 in Gaon sabha for being used for non-agricultural purposes, he erred in discharging his judicial duties in accordance with the provisions of DLR Act in the sense that he did not either issue conditional order as required u/s 81 of the Act nor did he give the mandatory time of three months as required u/s 81 of the Act for enabling the appellant to reconvert the land into agricultural use. Even the final order as required u/s 81 (2) of the Act was not



passed. The warrants of possession was also not issues/decreed. On the contrary, the land was straightway vested in Gaon sabha. It is also noticed that after passing of the lower court order the appellant sought justice from appellate court i.e. the court of ADM (Rev.) who remanded the case to the lower court with specific directions, but the Ld. RA/SDM Shri J.K. Dadoo instead of proceeding with the directions as given by the appellate court and instead of following the procedure as required u/s 81 of the Act, confirmed the earlier order of Shri C.P. Tripathi by vesting the land in Gaon sabha. Here also the same error was repeated. Surprisingly enough, there has neither been any conditional order as required u/s 81 of the act nor was a period of three months given to the appellant to reconvert the land into agricultural use. So much so, even the final order was passed contrary to the provisions of law. Even the warrant of possession was not issued in the case and the land was taken away from the appellants by use of force and handed over to the Directorate of Health Services for construction of a hospital. Such an action has been in gross violation of the laws on the subject and is an abuse of judicial process.

7.3 The above observations, however, do not suggest that the appellant has not committed any error. In fact, he has not come to the court with clean hands. On the basis of documents available on record it is amply clear that the land through an agency called "Land Dev. Corporation" had been carved out into the form of plots and sold to several persons who had later on formed a society namely "Indira Enclave". Moreover, the original bhumidars also sold their land to the appellants who constructed a gurudwara. Thus it appears to be true that if the encroachments which had come up on the agricultural land in the shape of plots, built up structures, houses were not demolished, a huge unauthorised colony would have come up by now. It is also true that if all the provisions as laid down u/s 81 of the Act had been followed by the Ld. SDM/RA, Shri C.P. Tripathi or Shri J. K. Dadoo the land would have been vested finally in Gaon Sabha against which no remedy would have been made available. But due to failure on these officers substantial damage has been caused to the credibility of the institution of SDM/RA and also resulted in financial loss to the Gaon Sabha/Dte. of Health Services, who have developed the land and constructed a boundary wall over the land.

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7.5 Normally in a case u/s 81 when due opportunities have not been given to the parties and the land is vested in Gaon Sabha such order is likely to be set aside and the case is likely to be remanded back to the lower court for deciding the case afresh on merits. But in the instant case, such remand would serve no purpose because herein the Ld. SDM/RA Shri J.K. Dadoo without passing warrant of possession has already demolished the structure due to which the land has been reconverted into agricultural use. Now there is no encroachment



on the suit land. In such a situation, even after the case is remanded to the lower court, it will be no consequence because now there is no misuse of the agricultural land. Therefore, technically viewing the case cannot be remanded back to the lower court and deserves to be set aside. Moreover, since the vesting has been done arbitrarily without following the due procedure of law the order needs to be set aside. In fact at this stage, the case cannot be given any other shape. Such a situation would not have arisen had the P.O.'s of the lower court had exercised the judicial power with care and caution.

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8. In view of the detailed discussion above, I have no remedy but to accept the appeal and set aside the impugned order of the lower court. Incidentally, it may be mentioned that the land has already been restored to the appellant by the order of the Lt. Governor dated 21.5.91. I may also be mentioned that the land originally belongs to the private persons and not to Gaon Sabha. I however opine that the Gaon Sabha is entitled to recover the cost of damages, equivalent to the cost of works, which may have been put in by Gaon Sabha/Dte. of Health Services to develop and reclaim the land in accordance with the provisions of law. I also opine that the objectors are entitled to approach the appropriate court of law for redressal of their grievances. The SDM/RA is further directed to make a spot inspection of the suit land and to initiate proceedings u/s 81 of the Act in respect of such land, if any, which is under misuse in accordance with the provisions of the Act.

Announced in the open court on this 26th day of November, 1993. File be consigned to record room. Let a copy of this order be sent to the Registrar of the Delhi High Court for information that the order has been pronounced as per the directions of the Hon'ble Court dated 10th August 93 in CW 4073 and CM 7482/92."

E. SUBMISSIONS OF THE PETITIONER

23. Assailing the impugned orders, Mr. J. P. Sengh, learned Senior Counsel, firstly submitted that both the LG as well as the Financial Commissioner have clearly failed to note that the procedure as mandatorily prescribed by Section 81 was not adhered to before passing of orders of eviction against the petitioner. It was submitted that no conditional order of eviction was ever passed and the Revenue Assistant proceeded to direct the vesting of the land in the Gaon Sabha notwithstanding the statutory W.P. (C) 114/1994 & 3520/1994



obligation placed upon that authority to provide the occupier three months time to restore the land to its original status. The more serious objection which was voiced was that the order of eviction came to be passed by the Revenue Assistant while dealing with a suit preferred by the petitioner under Section 85. According to Mr. Sengh, while it would have been open to the authority to deny the claim of the petitioner as flowing from Section 85, those proceedings could not have possibly been collaterally utilized or resorted to for passing orders for the eviction of the petitioner and directing the vesting of the land in the Gaon Sabha. Mr. Sengh, proceeding further and laying emphasis on the contents of the notice issued under Section 81 of the Act, contended that the action proposed against the petitioner undisputedly rested upon the allegation of the land being used for non-agricultural purposes. Learned senior counsel submitted that it would be thus wholly incorrect on the part of the respondents to urge that the notice is liable to be treated as being one purporting to be under Section 86A of the Act. Learned Senior Counsel further submitted that none of the statutory authorities have held against the petitioner on the ground that the action of the respondents would stand legitimized in terms of the provisions of Section 86-A of the Act.

24. Learned Senior Counsel then submitted that bearing in mind the undisputed fact that the land in question was private land in which bhumidhari rights stood conferred on three land holders, Section 86 A could clearly not have been invoked at all since the land did not belong to the Gaon Sabha. Mr. Sengh underlined the fact that the said provision can only



apply to situations where an occupier is liable to be evicted at the instance of the Gaon Sabha.

25. Turning to the validity of the order passed by the Financial Commissioner, learned Senior Counsel submitted that a manifest error has been committed by that authority, who proceeded on the basis that the order of the Additional Collector rested solely on the decision of the LG of 21 May 1991. According to Mr. Sengh the order of the Financial Commissioner impugned herein suffers from a patent error since it fails to deal with the validity of the proceedings taken under Section 81 of the Act and which was an issue which was duly noticed by the Additional Collector in his order of 26 November 1993 and answered in favour of the petitioner.

26. Mr. Sengh has also assailed the findings as recorded by the Financial Commissioner on the validity of the sale which was affected in favour of the petitioner by the original landholders on 2 April 1983. According to Mr. Sengh, the findings as recorded by the Financial Commissioner are clearly based on surmises since no evidence is relied upon which may have cast a doubt on the validity of the sale deed executed in favour of the petitioner and stood duly registered. It was contended that the authorities failed to bear in mind the fact that “*certified copies*” of the original sale deed had been presented since the originals had come to be destroyed when the gurdwara was attacked in 1984. According to Mr. Sengh, the findings with respect to the sale deed not being sufficiently stamped or not bearing the signatures of the Sub Registrar proceed on the incorrect premise that the petitioner had produced photocopies of the original instrument. According



to Mr. Sengh since certified copies had been produced before the respondents, those copies were embossed with stamp paper of Rs.2 as was the prevalent practice at that time.

27. Mr. Sengh has also vehemently challenged the action of the respondents who proceeded to evict the petitioner in December 1985 without any lawful authority. Learned Senior Counsel placed reliance on Article 300 A of the Constitution to submit that the right of the petitioner to peacefully enjoy property was clearly violated by the respondents who carried out the eviction process in clear violation of the law and without following due process. Mr. Sengh also laid emphasis on the fact that the order of the Revenue Assistant vesting the land in the Gaon Sabha had already come to be set aside and was not even existing at the time when the petitioner was evicted. It was pointed out that the original order had already been set aside in appeal on 26 September 1983 and the original order restored only on 10 April 1986. During this period, according to learned senior counsel, no order of a competent court directing the eviction of the petitioner existed or operated so as to empower the respondents to lawfully eject him from the land in dispute.

28. Turning to the order passed by the LG, Mr. Sengh submitted that undisputedly the LG was only exercising administrative powers and thus could not have possibly reviewed or recalled the order of 21 May 1991. Mr. Sengh submitted that the order of this Court calling upon the LG to decide the issue afresh and bearing in mind the complaint made by Vijay



Kumar cannot possibly be viewed as conferring a power of review on the LG.

29. Mr. Sengh then submitted that the order of the LG proceeded on the incorrect premise that the orders passed by the Revenue Assistant refuting the claim of the petitioner based on Section 85 of the Act had attained finality. It was submitted that despite a specific request having been made before the LG to call for the papers pertaining to the appeal which was pending before the Additional Collector at that time, the prayer made in that regard was arbitrarily refused.

30. A more serious objection was taken by Mr. Sengh with respect to the fact that although the LG in the impugned order, and more particularly paragraph 19 thereof, had framed two principal questions, namely, the validity of the vesting of the land in Gaon Sabha and the title of the petitioner over the land, no findings on these questions were ultimately returned or recorded by the LG. According to Mr. Sengh, the two issues which were framed were fundamental to a fair consideration of the claim of the petitioner and the LG has committed a gross illegality in having failed to record definitive findings in respect of the same.

31. Referring then to Section 186 of the Act, Mr. Sengh contended that once the petitioner had claimed rights flowing from a sale deed duly registered and executed in his favour, in case a doubt or a question with respect to title did arise or present itself for determination, it was incumbent upon the respondents to refer the same for adjudication by the competent court.



32. It was lastly pointed out that undisputedly, the eviction notice was addressed to the petitioner only and in the course of the protracted litigation which ensued, the original landholders were never proceeded against or placed upon notice under Section 81. This, Mr. Sengh, would contend constitutes a patent illegality committed by the respondents. It was further pointed out that the lease deed which was executed in favour of the Department of Health stood cancelled pursuant to the order of the LG of 21 May 1991 and the consequential order of 11 June 1991. It was submitted that while restoring the allotment made in favour of that Department, the respondents have proceeded on the basis of the assumption that the original allotment order still held the field. It was contended that the action of the respondents in this regard evidences a complete non application of mind and is thus liable to be set aside by this Court.

F. SUBMISSIONS OF THE RESPONDENTS

33. Refuting the aforesaid submissions, Mr. Naushad Ahmed Khan, learned Additional Standing Counsel, has taken the Court in some detail through the various findings returned by the Financial Commissioner and the reports drawn by subordinate authorities which have chronicled the acts of the petitioner colluding with revenue officials and the serious allegations of interpolations having been made in the relevant record. Mr. Khan submits that the entire case of the petitioner referable to Section 85 of the Act was based on revenue records which were seriously doubted and had been found to have been manipulated to aid the claim of the petitioner. It was submitted that the respondents as a matter of fact had found that



numerous plots had been carved over the land in question out and that the entire area had been colonized. According to Mr. Khan the aforesaid admitted fact clearly established that the land was not being used for agricultural purposes at all. Mr. Khan would submit that once the respondents came to conclude that the land had been put to non-agricultural use and that the petitioner was a mere trespasser who had encroached upon the land, the vesting of the same in the Gaon Sabha was a necessary and logical corollary.

34. Mr. Khan submitted that the petitioner had failed to produce any reliable evidence in support of the validity of the sale as stated to have been made in his favour in April 1983. According to Mr. Khan it is wholly implausible to accept the contention of the petitioner in this regard bearing in mind the fact that the original land holders had already sold the parcel of land in question to Land Trade Corporation in January and March 1970. It is in the aforesaid backdrop that Mr. Khan submits that once the original land holders had transferred all rights in the land to Land Trade Corporation, no rights could have been legally conferred on the petitioner in April 1983.

35. Referring to the report of the Financial Commissioner as submitted before the LG, it was pointed out that upon the respondents realizing that the petitioner had no valid title to the land, recommendations were made for initiation of proceedings under section 86A of the Act. The issuance of the notice under Section 81, it was contended, was a mere typographical error and an inadvertent mistake. According to Mr. Khan, that in any case cannot



possibly invalidate the ultimate action that was initiated against the petitioners since the respondents did stand conferred with the jurisdiction statutorily to move against persons occupying land without title.

36. Mr. Khan has referred to the various reports submitted by the revenue officials which according to him clearly established that no cultivation at all had been undertaken by the petitioner. It was submitted that the petitioner was consequently rightly evicted from the land in question. Mr. Khan has further drawn the attention to the fact that the State is admittedly in possession of the land in question and that the suit preferred by the petitioner for being inducted back in possession has admittedly come to be dismissed on 26 July 2019. The Court is further apprised that although a regular first appeal has been preferred by the petitioner aggrieved by the judgment rendered on that suit, no effective relief, interim or otherwise, has been accorded to the petitioner in those proceedings till date.

37. Mr. Khan has also drawn the attention of the Court to the affidavit as submitted in these proceedings on behalf of the Department of Health Services. Referring to the aforesaid affidavit, it was pointed out by Mr. Khan that in terms of a communication of 16 February 2012 received from the DDA, the respondents have been apprised that the plot has been earmarked in the Master Plan of Delhi 2021 as a hospital site and which has been duly approved by the Ministry of Urban Development in the Union Government. Mr. Khan has also referred to the disclosures made in that affidavit and which places forth the details of the amounts paid by the

W.P. (C) 114/1994 & 3520/1994



respondents to the Gaon Sabha concerned on 28 June 1991 as also with respect to the appointment of PWD as the consulting agency for the implementation of the project in question and to which substantial sums have been paid in April 2012. The affidavit additionally has referred to the fact that the preliminary drawings for the project in question have also been duly prepared and submitted to the PWD for further action.

38. Mr. Khan has also drawn the attention of the Court to the affidavit filed by the Block Development Officer in W.P.(C) 114/1994 to submit that upon the passing of the orders by the LG and the Financial Commissioner, the entire litigation has been brought to an end and that in light of the conduct of the petitioner who had colluded with revenue officials, no relief is liable to be accorded. Taking the Court through paragraph 10 of this affidavit, Mr. Khan has also highlighted the fact that another individual also appears to have instituted a suit for permanent injunction in respect of a part of the property in dispute being CS(OS) 500/2019 which came to be dismissed on 15 January 2020.

39. Mr. Khan has also urged that the petitioner has taken contradictory stands during the course of the litigation which ensued, and which is evident from the fact that while initially they proceeded on the basis that they were in adverse possession, that was subsequently changed and the petitioner then placed its case on the sale deed of 2 April 1983. This according to Mr. Khan itself is sufficient evidence of the entire case of the petitioner resting on falsehood.



G. LG AND THE POWER TO REVIEW

40. Before proceeding to deal with the principal questions which fall for determination, it would be appropriate to deal with the submission of Mr. Sengh who contended that the LG could not have exercised a power of review and recalled the order of 21 May 1991. It becomes pertinent to note that the LG initiated proceedings pursuant to the directions issued by the Court on the writ petition of Vijay Kumar. The validity of the order passed by the LG aforementioned as well as the restoration of the land to the petitioner were the principal actions which were assailed and questioned in that writ petition. The Court upon noticing rival submissions and bearing in mind the nature of questions which arose had directed the LG to decide all issues of fact and law that arose. The order of this Court thus sufficiently empowered the LG to test the validity of the original order of 21 May 1991 as well as review the entire gamut of facts in order to adjudge the rival claims which came to be laid before him. It becomes relevant to note that the directions issued by this Court on the petition of Vijay Kumar was never questioned or challenged by the petitioner. In view of the aforesaid, the Court finds itself unable to sustain the objection as taken by Mr. Sengh in this respect. The issue, thus, stands answered against the petitioner.

H. VESTING UNDER THE ACT

41. Learned counsels for respective sides have addressed elaborate submissions on the validity of the order of the Revenue Assistant who after rejecting the claim of the petitioner raised in terms of Section 85, proceeded to simultaneously record that the land would “vest” in the Gaon Sabha. In W.P. (C) 114/1994 & 3520/1994



order to evaluate and appreciate the rival contentions raised in this respect, it would be necessary to briefly pause here and advert to the relevant provisions of the Act and the concept of “vesting” as contemplated thereunder.

42. It may at the outset be noted that Section 4 of the Act contemplates two classes of tenure holders: - (a) a bhumidhar who is recognised to be the principal tenure holder and (b) an asami who is considered to be a sub tenure holder. As would be evident upon a reading of Section 4(2), a bhumidhar is one who holds land directly under the State and is liable to pay land revenue for the said land. An asami, on the other hand, holds land either from the bhumidhar or the Gaon Sabha and is liable to pay land revenue to either the tenure holder or the Gaon Sabha as the case may be. Upon the promulgation of the Act, the rights of individual landholders and proprietors in waste lands, pasture lands, lands of public utility and other categories mentioned in Section 7 came to be extinguished upon payment of compensation determined under the Act. Section 7 reads thus:

“Section 7 - Rights of proprietors in waste lands, pasture lands or lands of common utility, etc., to vest in Gaon Sabha and compensation to be paid for them - (1) All rights of an individual proprietor or proprietors pertaining to waste lands, grazing or collection of forest produce from forest or fish from fisheries lands of common utility such as customary common pasture lands, cremation or burial grounds, abadi sites, pathways, public wells, tanks and water channels, or Khalihans, whether covered by an existing contract between such proprietor or proprietors and any other person or not, shall with effect from the commencement of this Act be terminated in accordance with the provision of sub-section (2) and the said contracts, if any, shall become void with effect from such commencement:



Provided that where such land was as a result of consolidation of holdings made available for use for any purpose other than those referred to in this sub-section, land kept aside in exchange thereof, as a result of such consolidation, shall for the purposes of this Act be deemed to be land originally meant for purposes referred to in this sub-section.

Explanation. - For the purposes of this sub-section-

(i) "waste land" shall include cultivable and uncultivable waste area of the village including any land in the bed of a river occupied or held by an *Asami* referred to in section 6(a) (iii) of the Act except the uncultivated areas-

(a) included in the holdings of such proprietor or proprietors, or

(b) used for purposes other than those mentioned in clause (13) of section 3, at any time before the 28th day of October, 1956, or

(c) acquired by a *bona fide* purchaser for value at any time before the 28th day of October, 1956, for purpose other than those mentioned in clause (13) of section 3.

(ii) "lands of common utility" shall include such lands as are recorded as such at the last settlement or have been or would have been customarily recorded as such on 1st July, 1950.

(2) On the commencement of this Act, the Deputy Commissioner shall pass an order in respect of the proprietor or proprietors of each village either singly or collectively divesting the individual proprietor or proprietors of the rights mentioned in sub-section (1) and vesting those rights in the Gaon Sabha or in any person or authority appointed by the Chief Commissioner under section 161 with effect from the commencement of this Act and stating that a compensation equal in value to four times the amount of annual land revenue assessed at the last settlement for the cultivable and uncultivable waste area of the village shall be paid by the government to the proprietor or proprietors concerned.

If no such assessment of land revenue was made at the last settlement the rate of land revenue applied at the last settlement for similar areas in any other village in the same assessment circle shall be taken to be the rate of land revenue applicable to such areas or failing this the rate of land revenue



applicable to such areas shall be computed at 75 per cent. of the land revenue assessed on the lowest class of soil in the village.

(3) The amount of compensation shall be calculated separately for each village for the respective proprietor or proprietors in accordance with rules made under this Act and payments thereof shall be made in such number of annual instalments, not exceeding four, as the Chief Commissioner may determine, the first of which shall be paid-

(a) in any case where such calculation has been made before the date on which the Delhi Land Reforms (Amendment) Act, 1959, receives the assent of the President, on the first day of the fasli year next following such date; and

(b) in any other case, on the first day of the fasli year next following the date of such calculation.

(4) Where the amount of compensation is not paid by the due date specified in sub-section (3), such amount shall be paid with interest thereon at the rate of 2 ½ per cent. per annum from the said date until payment.”

43. Section 154 deals with the subject of vesting of land in the Gaon Sabha upon the commencement of the Act and provides as under:-

“Section 154 - Vesting of certain lands etc., in Gaon Sabha - (1) On the commencement of this Act. -

(i) all lands whether cultivable or otherwise, except land for the time being comprised in any holding or grove,

(ii) all trees (other than trees in a holding or on the boundary thereof or in a grove or abadi) or planted by a person other than a proprietor on land other than land comprised in his holding,

(iii) public wells,

(iv) fisheries,

(v) hats, bazars and meals, except hats, bazars and meals held on land to which provisions of clauses (a) to (c) of sub-section (1) of section 11 apply,



(vi) tanks, ponds, water channels, pathways and abadi sites,

(vii) forest, if any,

situate in a *Gaon Sabha* Area, shall vest in the *Gaon Sabha*:

Provided that if the uncultivated area situate in any *Gaon Sabha* Area is, in the opinion of the Chief Commissioner, more than the ordinary requirements of the *Gaon Sabha*, he may exclude any portion of the uncultivated area from vesting in the *Gaon Sabha* under this section and may make such incidental and consequential orders as may be necessary.

(2) Where any land which is vested in the Central Government under sub-section (3) or sub-section (4) of section 150, is held immediately before such vesting by an *Asami* of a *Gaon Sabha*, then, notwithstanding anything contained in clause (b) of sub-section (2) of section 1, and so long as it is held by such *Asami*, the provisions of this Act shall continue to apply to such land subject to the modification that all references therein to *Gaon Sabha* and *Gaon Panchayat* shall in relation to such land be construed as reference to the Central Government.”

44. Apart from land which comes to vest and fall under the management and control of the *Gaon Sabha* in terms of Sections 7 and 154, the Act further provides for various contingencies in which land may come to be possessed by the *Gaon Sabha*. Amongst the various eventualities when land may vest in the *Gaon Sabha*, are when it falls vacant or when the interest of a *bhumidhar* or *asami* therein comes to be extinguished. The Act contemplates the extinction of the interest of the *bhumidhar* or *asami* in land in situations set forth in Sections 67 and 68. Those provisions are extracted hereunder:

“Section 67 - Extinction of the interest of *Bhumidhar*. - The interest of *Bhumidhar* in his holding or any part thereof shall be extinguished-

(a) when he dies intestate leaving no heir entitled to inherit in accordance with the provisions of this Act,

W.P. (C) 114/1994 & 3520/1994

Page 31 of 60



(b) when the land comprised in the holding has been acquired under any law for the time being in force relating to the acquisition of land,

(bb) when a declaration in respect of such holding or part is made under clause (a) of sub-section (6), of section 65A,

(c) when he has been ejected in accordance with the provisions of this Act, or

(d) when he has been deprived of possession and his right to recover possession is barred by limitation.

Section 68 - Extinction of the interest of an Asami. - Subject to the provisions of section 51 and 52, the interest of an *Asami* in holding or any part thereof shall be extinguished -

(a) when he dies leaving no heir entitled to inherit in accordance with the provisions of this Act,

(b) when the holding has been declared as abandoned in accordance with provisions of section 64,

(c) when he surrenders his holdings,

(d) when the land comprised in the holding has been acquired under any law for the time being in force relating to the acquisition of land,

(dd) where his lease is terminated under clause (ii) or clause (iii) of sub-section (4), or clause (b) of sub-section (6), of section 65A,

(e) when he has been ejected in accordance with the provisions of this Act, or

(f) when he has been deprived of possession and his right to recover possession is barred by limitation.”

45. Upon the extinction of the interest of the tenure holder, it essentially becomes vacant land in the sense that it ceases to be a part of the holding of an individual. The Gaon Sabha consequently becomes entitled to possess the land in terms of the provisions made in Section 72 which reads as under:



“Section 72 - Gaon Sabha to take over land after extinction of interest therein. -The Gaon Sabha shall be entitled to take possession of land comprised in holding or part thereof if -

(a) the land was held by *Bhumidhar* and his interest in such land is extinguished under clause (a) or clause (c) of section 67, or

(b) the land, being falling in any of the clauses mentioned in sub-clause (iii) of clause (a) of section 6, was held by an *asami* and the *asami* has been ejected or his interest therein has otherwise extinguished under the provisions of this Act.”

46. Once the Gaon Sabha comes to take over possession of the land, it is empowered by law to admit a person as *bhumidhar* or *asami* in that land in accordance with the provisions made in Sections 73 and 74 which read thus: -

“Section 73 - Admission to land . - The *Gaon Sabha* have the right to admit any person as *Bhumidhar* to any land, other than land falling in any of the classes mentioned in 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* under section 154,

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

(d) the land is let in accordance with sub-section (4) of section 74.

Section 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 any person as *Asami* to any land falling in any of the classes mentioned in 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 *Goon Sabha* under section 72 or under any other provisions 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 per cent. 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 ejectment 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.”

47. It would be pertinent to bear in mind that the word “vesting”, as has been held on more than one occasion, is an expression of myriad hues, frequently donning a colour and complexion dependent upon the context in which it is used in a particular statute and the intent of the Legislature. In **Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu**⁴, the Supreme Court explained this position as under: -

⁴ 1991 Supp (2) SCC 228



10. The word 'vest' clothes varied colours from the context and situation in which the word came to be used in a statute or rule. *Chamber's Mid-Century Dictionary* at p. 1230 defines 'vesting' in the legal sense "to settle, secure, or put in fixed right of possession; to endow, to descend, devolve or to take effect, as a right". In *Black's Law Dictionary*, (5th edn. at p. 1401) the meaning of the word 'vest' is given as : "to give an immediate, fixed right of present or future enjoyment; to accrue to; to be fixed; to take effect; to clothe with possession; to deliver full possession of land or of an estate; to give seisin; to enfeoff". In *Stroud's Judicial Dictionary*, (4th edn., Vol. 5 at p. 2938), the word 'vested' was defined in several senses. At p. 2940 in item 12 it is stated thus "as to the interest acquired by public bodies, created for a particular purpose, in works such as embankments which are 'vested' in them by statute", see *Port of London Authority v. Canvey Island Commissioners* [(1932) 1 Ch 446] in which it was held that the statutory vesting was to construct the sea wall against inundation or damages etc. and did not acquire fee simple. Item 4 at p. 2939, the word 'vest', in the absence of a context, is usually taken to mean "vest in interest rather than vest in possession". In item 8 to 'vest', "generally means to give the property in". Thus the word 'vest' bears variable colour taking its content from the context in which it came to be used. Take for instance the land acquired under the Land Acquisition Act. By operation of Sections 16 and 17 thereof the property so acquired shall vest absolutely in the government free from all encumbrances. Thereby, absolute right, title and interest is vested in the government without any limitation divesting the pre-existing rights of its owner. Similarly, under Section 56 of the Provincial Insolvency Act, 1920, the estate of the insolvent vests in the receiver only for the purpose of its administration and to pay off the debts to the creditors. The receiver acquired no personal interest of his own in the property. The receiver appointed by the court takes possession of the properties in the suit on behalf of the court and administers the property on behalf of the ultimate successful party as an officer of the court and he has no personal interest in the property vested thereunder. In *Fruit and Vegetable Merchants Union v. Delhi Improvement Trust* [1957 SCR 1 : AIR 1957 SC 344] , the question was whether the Delhi Improvement Trust was vested of the Nazul land belonging to the government with absolute right, when the property was entrusted under the scheme for construction of the markets etc. It was held by this Court that placing the property at the disposal of the trust did not signify that the government had divested itself of the title to the property and transferred the same to the trust. The clauses in the agreement show that the government had created the trust as its agent not on permanent basis but as a convenient mode of having the scheme of improvement implemented by the Trust subject to the control of the government.

11. The word 'vesting' in Section 85 would signify that the water courses and tanks, lands etc. used by the public to such an extent as to give a prescriptive right to their use, are vested in the Gram Panchayat, and placed them under the control and supervision of the Gram Panchayat. It confers no absolute or full title. It was open to



the government, even after vesting, to place restrictions upon the Gram Panchayat in the matter of enjoyment and use of such tanks, and appurtenant lands etc. Sub-section (3) of Section 85 expressly makes the matter clear. It empowers the government to assume the administration of any such tank or lands or to define or limit the control which is vested in the Gram Panchayat. Gram Panchayat being a statutory body is bound by the restrictions imposed by sub-section (3) of Section 85.....”

48. Reiterating the recognised precept that the word “vest” or “vesting” cannot be accorded an inflexible connotation, the Supreme Court in **Bharat Coking Coal Ltd. v. Karam Chand Thapar & Bros. (P) Ltd.**⁵ held: -

“3. The word “vest” in common English acceptance means and implies conferment of ownership of properties upon a person and in the similar vein it gives immediate and fixed right of present and future enjoyment. Significantly, however, the expression “vest” is a word of variable import since it has no fixed connotation and the same has to be understood in different contexts under different set of circumstances. The decision of this Court in *Fruit & Vegetable Merchants Union v. Delhi Improvement Trust* [AIR 1957 SC 344] lends concurrence to the same. It is in this context a later decision of this Court [*M. Ismail Faruqui (Dr) v. Union of India* [(1994) 6 SCC 360 : AIR 1995 SC 605] , AIR at p. 645] ought also to be noticed, wherein this Court stated: (SCC pp. 423-24, para 96)

“96. (4) The vesting of the said disputed area in the Central Government by virtue of Section 3 of the Act is limited, as a statutory receiver, with the duty for its management and administration according to Section 7 requiring maintenance of status quo therein under sub-section (2) of Section 7 of the Act. The duty of the Central Government as the statutory receiver is to hand over the disputed area in accordance with Section 6 of the Act, in terms of the adjudication made in the suits for implementation of the final decision therein. This is the purpose for which the disputed area has been so acquired.

(5) The power of the courts in making further interim orders in the suits is limited to, and circumscribed by, the area outside the ambit of Section 7 of the Act.

(6) The vesting of the adjacent area, other than the disputed area, acquired by the Act in the Central Government by virtue of Section 3 of the Act is absolute with the power of management and administration thereof in accordance with sub-section (1) of Section 7 of the Act, till its further vesting in any authority or other body or trustees of

⁵ (2003) 1 SCC 6



any trust in accordance with Section 6 of the Act. The further vesting of the adjacent area, other than the disputed area, in accordance with Section 6 of the Act has to be made at the time and in the manner indicated, in view of the purpose of its acquisition.

(7) The meaning of the word “vest” in Section 3 and Section 6 of the Act has to be so understood in the different contexts.

(8) Section 8 of the Act is meant for payment of compensation to owners of the property vesting absolutely in the Central Government, the title to which is not in dispute being in excess of the disputed area which alone is the subject-matter of the revived suits. It does not apply to the disputed area, title to which has to be adjudicated in the suits and in respect of which the Central Government is merely the statutory receiver as indicated, with the duty to restore it to the owner in terms of the adjudication made in the suits.”

49. It clearly flows from the aforesaid discussion that the word vesting as understood or contemplated under the Act cannot be accorded an unalterable or static meaning since it would bring within its ambit not just concepts of absolute title and ownership but also vesting of interests and possessory rights in and over land as may be acquired by the Gaon Sabha in terms of the provisions made in the Act. The Court notes that while certain categories of land came to vest in the Gaon Sabha from the inception of the Act itself [Sections 7 and 154], lands which fall vacant or are freed from the restrictions which otherwise operate against the Gaon Sabha while they form part of a holding of tenure holder [Sections 67-74], also fall within the control and authority of the Gaon Sabha absolutely. The only distinction that must be borne in mind is that while the ownership of the former category of land was bestowed upon it from inception or after acquisition of interests therein, the latter category falls within its jurisdiction to administer and dispose upon the happening of contingencies contemplated under the Act. One of the events which attracts the latter is when a tenure holder



comes to be lawfully ejected from the land and as a consequence thereof, it comes under the control of the Gaon Sabha which then stands conferred absolute rights to deal with that land in accordance with the provisions made in the Act. Similarly, where land falls “vacant” in situations envisaged under the Act, then too the Gaon Sabha can possess the same and deal with it accordingly. It is in light of the aforesaid discussion that the order of the Revenue Assistant directing the vesting of the land is liable to be understood and appreciated. Indubitably, the plot in question was private land comprised in the holding of the original bhumidhars. The Revenue Assistant while providing for the land to “vest” in the Gaon Sabha essentially sought to divest and strip the landholders and occupants claiming rights in and over the land in question of all rights and consequently place the same in the hands of the Gaon Sabha.

50. The direction of the Revenue Assistant for the “vesting” of the land in the Gaon Sabha, thus gives birth to fundamental questions of whether the petitioner who was an occupant of the land in dispute was lawfully ejected, whether the rights of the original bhumidhars or the petitioner could be otherwise said to have been extinguished in law and whether the Gaon Sabha was lawfully conferred possession and rights in and over the land.

I. CONDITIONAL EJECTMENT AND SECTION 81

51. Part H in Chapter III deals with the ejectment of bhumidhars and asamis. Section 76 of the Act mandates that a bhumidhar shall not be liable to ejectment. This right conferred by the Act is made subject to the provisions made in Sections 33, 42, 81, 85, 86A and 87. Sections 33 and 42



of the Act place various restrictions on the right of a bhumidhar to transfer land. Section 77 specifies the grounds on which an asami can be evicted. Since we are not concerned with the rights of an asami in the present matter, it would be unnecessary to dwell on that provision. Part H then deals with the various situations where a bhumidhar may become liable to be evicted from his landholding. Broadly speaking it proceeds as follows. While Sections 81 and 82 deal with the consequences of land being used for purposes other than agricultural, horticulture or animal husbandry, Section 84 covers cases where land is held by a person without title. Section 86A also covers the aforesaid subject with the Revenue Assistant being additionally conferred the power to evict a person occupying land without title notwithstanding the original landholder or the Gaon Sabha having failed to institute proceedings for ejectment against the trespasser. This provision empowers the Revenue Assistant to initiate proceedings suo moto. Section 87 deals with cases where persons come to illegally occupy public utility land and thus become liable to ejectment.

52. A conjoint reading of Sections 81 and 82 establishes that a bhumidhar who fails to utilise land for the purposes specified in the Act or puts it to use for a purpose other than those sanctioned under the Act, becomes liable to ejectment on a suit brought by the Gaon Sabha or the bhumidhar as the case may be. The occupant of the land is also liable to pay damages which would be equivalent to the cost that is likely to be incurred to make the land fit to be utilised for agricultural purposes. Section 81(2) additionally confers a power upon the Revenue Assistant to eject a bhumidhar or asami, either on receipt of information or suo moto, upon W.P. (C) 114/1994 & 3520/1994



finding that the land is not being used for purposes permissible under the Act. However, the occupant of the land does not become liable to ejectment outright as would be evident from a reading of Section 82. That provision, firstly in sub section (1), prescribes that the decree of ejectment may be made for the whole or part of the holding dependent upon the facts and circumstances of the case. Sub section (1) thus appears to make provision for situations where a part of the holding alone has been utilised for a purpose other than that specified under the Act and in which case, the decree may be drawn for that part alone. Sub section (2) then significantly provides that the decree of eviction shall further direct that if the bhumidhar or asami repair the damage caused to the land within 3 months after the passing of an order of ejectment, the decree shall not be executed except with respect to costs. Sub section (2) is couched in mandatory terms as is manifest from the employment of the phrase “*shall further direct*”. A careful reading of that provision clearly establishes that it envisages a conditional decree being drawn up in the first instance granting an opportunity to the occupant of the land to restore the land to its original status and character within 3 months of the passing of the order of ejectment. For that period of 3 months, the decree of ejectment is to be placed in abeyance. It is only consequent to a failure by the occupant to undertake and complete the process of restoration that eviction is to be affected.

53. The Legislature appears to have consciously structured this provision along the lines aforementioned perhaps being aware that the cause or the infraction which leads to the initiation of proceedings under Section 81, is W.P. (C) 114/1994 & 3520/1994



one which is curable and capable of rectification. The power conferred on the Revenue Assistant independently by Section 81(2) must also and consequentially be interpreted as binding that authority to pass a conditional decree of eviction in the first instance. This position is fortified from the use of the expression “*after following such procedure as may be prescribed*” in Section 81(2). The suo moto power invested in the Revenue Assistant by Section 81(2) must thus be recognised and understood to be subject to the provisions of Section 82. The Court, in any case, finds itself unable to interpret or comprehend Section 81(2) as freeing the Revenue Assistant from the restriction on the power to evict as comprised in Section 82. Taking a contrarian view would not only be unjustified and do violence to the scheme of Sections 81 and 82, it may also lend credence to an argument of an arbitrary conferment of power.

54. The Court thus comes to the definitive conclusion that the process of eviction as envisaged under Sections 81 and 82 follows a three-tiered graded approach of firstly a finding coming to be recorded that the land has in fact been put to a non-agricultural use, an order of eviction coming to be framed, an opportunity being afforded to the occupant to restore the land and only in case of a failure to undertake the work of restitution within the period prescribed, would eviction ensue.

J. EVICTION- DIFFERENT OUTLINES

55. Sections 84 and 86A, on the other hand, proceed on a completely distinct plane and deal with cases where land comes to be occupied by persons who possess no right, title or interest therein. The proceedings as W.P. (C) 114/1994 & 3520/1994



contemplated under the aforementioned two provisions, do not envisage or mandate any conditional decrees being passed. Section 84 contemplates the eviction of every occupant who is found to have taken or be retaining possession of land. Where the land forms part of the holding of any bhumidhar or asami, proceedings are to be initiated by either of them and where it does not form part of any holding, proceedings are liable to be initiated by the Gaon Sabha. It becomes pertinent to note that where the land forms part of the holding of a bhumidhar or asami, then proceedings are liable to be initiated only by them and the Gaon Sabha is entitled to institute an action for eviction only where the land does not stand comprised in a holding which is privately held in accordance with the Act.

56. The Act in Section 85 makes provisions to deal with situations where a bhumidhar, asami or Gaon Sabha fail to initiate proceedings for eviction as contemplated in Section 84. It provides that in case where no action for eviction is brought within the period of limitation prescribed for such an action, the occupant taking or retaining possession without the consent of the landholder, may institute proceedings for the conferment of bhumidhari or asami rights. It essentially holds that in such a situation the occupant can claim that he be declared the bhumidhar or asami of that holding. In a case where the land does not constitute a part of the holding of a bhumidhar or asami and thus covered by Section 84(1)(b), the occupant would become the bhumidhar or the asami thereof as if he had been admitted to that land as such by the Gaon Sabha. Continuing with the rights created by Section 85 on a person who holds land by way of adverse possession, it becomes relevant to note that notwithstanding the conferment of bhumidhari or W.P. (C) 114/1994 & 3520/1994



asami rights in terms of that provision, the occupant may yet be evicted from such land at the instance of the Gaon Sabha in terms of the provisions of Section 86 of the Act. It would be important and necessary to clarify that Section 86 would stand attracted only in a case where an occupant has been conferred bhumidhari or asami rights under Section 85 and not otherwise.

57. Section 86A commences with a non obstante clause and is thus entitled to be invoked by the Revenue Assistant regardless of Sections 84, 85 and 86. This section empowers the Revenue Assistant to initiate proceedings for ejectment of any person who is otherwise liable to be evicted in terms of the three provisions noted above either upon receipt of information or suo moto. The power conferred is hedged by the solitary rider of being invoked only in cases where the occupant is liable to eviction under Sections 84, 85 and 86 on a suit of the Gaon Sabha. This is obvious when one bears in mind the language of the section which confines the exercise of power to *“eject any person who is liable to be ejected from any land on a suit of the Gaon Sabha under any of those sections, after following such procedure as may be prescribed.”*

58. The Gaon Sabha is entitled to institute proceedings for eviction only in cases which would fall under Sections 84(1)(b) or Section 86. It becomes pertinent to recall that Section 84(1)(b) would apply only where the land does not form part of the holding of a bhumidhar or asami and is held without title. Section 86 deals with a case where the occupant has acquired a right or interest in the land in terms of Section 85 and where it has been found that the land was adversely possessed against a bhumidhar, asami or



the Gaon Sabha. The only other scenarios in which the Gaon Sabha acquires interests in land which may otherwise be comprised in a holding are those where the interest of the bhumidhar or asami has come to be extinguished and the Gaon Sabha takes over possession of vacant land as per the scheme underlying Sections 67 to 74 of the Act. It is in the aforementioned situations alone that the powers comprised in Section 86A are entitled to be invoked.

K. EVICTION ON THE ANVIL OF SECTION 81/85

59. That takes us to the validity of the original orders passed by the Revenue Assistant when tested on the basis of Section 81 of the Act. However, before proceeding to do so, it becomes essential to underline the admitted fact that proceedings against the petitioner did not commence upon a notice being issued under Section 81. The order holding the petitioner to be a trespasser and directing the vesting of the land in the Gaon Sabha was made on a suit brought by the petitioner under Section 85. The first and in fact the only notice under Section 81 was one which came to be issued much later and required the petitioner to appear before the authorities on 30 October 1985 and show cause why he should not be evicted. However, since the proceedings of eviction were initially sought to be validated with reference to that provision, the Court proceeds to test the validity of the action against the provisions made in Section 81. It becomes important to bear in mind that proceedings under Section 81 are contemplated to be drawn against the bhumidhar or the asami. However, in the present case the original landholders were never put to notice. The



solitary notice which came to be issued under Section 81(2) was addressed to the petitioner here. Notwithstanding the above, the procedure as prescribed under Section 81 of the Act does not appear to have been followed at all. As was explained above, Section 81 contemplates a conditional order being passed requiring the bhumidhar or the asami to restore the land to its original status within the period prescribed in the decree. The decree for eviction remains suspended for a period of 3 months to enable the landholder to rectify the damage caused to the land and restore it for agricultural purposes. However, and is evident from a reading of the order of 25 June 1983, no such conditional order was made. The Revenue Assistant simply proceeded to reject the claim of the petitioner preferred under Section 85 of the Act and hold that the land would stand vested in the Gaon Sabha. The Court is thus of the firm opinion that the orders of 25 June 1983 as well as 10 April 1986 suffer from a patent illegality in having failed to adhere to the procedure prescribed under Section 81.

60. The Court is further of the considered view that an order of ejectment or for the vesting of the land in the Gaon Sabha cannot possibly be accepted as directions which could have been issued consequent to a rejection of a suit brought under Section 85 by the petitioner. A declaration of the land vesting in the Gaon Sabha cannot possibly be sustained whether tested on the anvil of Section 81 or the rejection of a suit under Section 85 for reasons which are set forth hereinafter.

61. Firstly, and insofar as Section 81 is concerned, the order for eviction could have been passed only upon the landholder having failed to repair and



restore the land to its former position or state. That provision cannot by any manner of interpretation be construed as either absolving the respondents from providing an opportunity to restore the land to its original condition or to direct the eviction of the occupant outrightly and direct its vesting in the Gaon Sabha simultaneously. According a legal imprimatur to the procedure so adopted and reflected in the orders of 25 June 1983 or 10 April 1986 would clearly militate against and be in stark violation of the scheme of Section 81.

62. Secondly, proceedings under Section 85 are instituted at the behest of the occupant of the land claiming to hold it by way of adverse possession. Those proceedings cannot possibly be construed as conferring authority on the respondents to collaterally order eviction or vesting of the land in the Gaon Sabha. The submission of learned counsel for the respondent that once the order of 25 June 1983 and 10 April 1986 had found the petitioner disentitled to the benefits of Section 85, eviction would consequentially follow is thus liable to be and is hereby rejected.

L. THE ARGUMENT OF A TYPOGRAPHICAL ERROR

63. Mr. Khan then submitted that the notice which was issued to the petitioner was wrongly typed and described to be under Section 81 when in fact it should have mentioned Section 86A. This submission rests on the report of the Halqua Patwari of 16 October 1985 which had recommended action being initiated under the aforesaid provision. The Court finds itself unable to accept this contention for the following reasons. Firstly, and as would be ex facie evident from the contents of the notice itself, it was based W.P. (C) 114/1994 & 3520/1994



solely on the allegation of agricultural land having been put to a use other than that sanctioned under the Act. This was, thus, not a case where the mere nomenclature or the header of the notice was fallacious or an outcome of a mistake. The notice was not based on the allegation that the petitioner was a rank usurper, trespasser or an entity occupying land without title. The Court consequently comes to the conclusion that the notice cannot possibly be said to suffer from a typographical error.

64. Additionally, it becomes pertinent to underline the fact that on the date when the notice under Section 81(2) came to be issued requiring the petitioner to appear on 30 October 1985, the order directing vesting of the land in the Gaon Sabha no longer existed or operated. The order of 25 June 1983 by which the land was directed to vest in the Gaon Sabha had come to be set aside on 26 September 1983 and the matter remanded to the Revenue Assistant for fresh consideration. It was this order which held the field when the notice under Section 81(2) came to be issued. Thus, the provisions of Section 86A were not available to be invoked in the absence of the land being legally recognised as vesting in the Gaon Sabha.

65. As was notice hereinabove, Section 86A in turn refers to proceedings for eviction that may be drawn in terms of and notwithstanding Sections 84, 85 and 86 of the Act. The proceedings under Section 84(1)(b) could have been drawn at the instance of the respondents only if the land was not comprised in a holding of a bhumidhar or asami and in case possession was being retained without the consent of the Gaon Sabha. In the absence of the land being legally recognised as belonging to the Gaon Sabha, the question



of invocation of Section 86A with reference to Section 84 of the Act could not have possibly arisen. Turning then to Section 85 read with Section 86, the Court notes that the power to evict as enshrined in Section 86 could have been invoked only in the eventuality of a person having been conferred the status of bhumidhar by virtue of Section 85(1). However, in the facts of the present case, the claim of the petitioner under that provision had already been rejected and the benefit contemplated under Section 85(1) denied. It is thus manifest that the notice whether tested on the anvil of the aforesaid provisions cannot possibly be construed as being referable to Section 86A of the Act.

66. More fundamentally, it becomes pertinent to observe that even if it be presumed that the respondents proceeded on the premise that the petitioner held the land without title, it was incumbent for a notice being issued to the petitioner requiring him to meet that charge. The Act nowhere sanctions proceedings for eviction being initiated or pursued on an allegation that is neither framed nor communicated or one in respect of which the occupier is not even afforded an opportunity to counter the allegation or establish to the contrary. It would be pertinent to bear in mind that an order of eviction yokes serious civil consequences. It cannot possibly be accorded an imprimatur on the basis of findings or conclusions introduced by way of inference or recorded collaterally in proceedings which are initiated independently by an occupant claiming the conferment of a benefit under the Act.



67. As this Court reviews the proceedings as initiated and continued, it is evident that the ultimate conclusions recorded are clearly disconnected with and disjointed from the allegations on which the notice under Section 81 itself was based. While the Court has independently evaluated the correctness of the submission addressed with regard to that notice bearing an incorrect header and found no merit in that submission, regard must also be had to the fact that neither the order of 10 April 1986 nor the ultimate order of the Financial Commissioner of 25 March 1994 are founded on a finding that the action taken against the petitioner is liable to be saved by virtue of the provisions of Section 86A of the Act. In any case and for the reasons recorded hereinabove, this Court is of the considered view that the orders passed by the Revenue Assistant can neither be saved on the anvil of Section 81 nor can they be salvaged under Section 86A.

M. IMPUGNED DECISION OF THE FINANCIAL COMMISSIONER

68. The Financial Commissioner, while hearing the appeal of the Gaon Sabha as preferred against the order of 26 November 1993 according relief to the petitioner and setting aside the order of vesting of 10 April 1986, has abjectly failed to either record or notice what he chose to describe as the “lengthy arguments” advanced before him since he opined that the same were not “germane to the determination of points, involved in the case”. Proceeding to take note of the prior sale stated to have been made in favour of Land Trade Corporation, the authority has proceeded to record that the subsequent sale asserted to have been made in favour of the petitioner “carried a question mark and ought not to have been given any credence”.



69. The Court is constrained to note that the Financial Commissioner was in seisin of a statutory appeal instituted under the provisions of the Act. These were judicial proceedings which mandated due consideration of the legal questions which arose for determination and a judicious consideration of the legal impact of events and orders passed. Firstly, there was no in-depth examination with respect to the veracity of the two sales. Strangely, the issue with respect to the claim of the petitioner under Section 85 is closed by the Financial Commissioner upon noticing that his name has come to be duly recorded in the relevant revenue record. The impact of the recordal of the name of the petitioner in the relevant record is neither evaluated nor adjudged. Proceeding further to deal with the validity of proceedings for eviction taken under Section 81, the Financial Commissioner proceeds on the mistaken assumption that the order of the Additional Collector in appeal rests solely on the order of the LG dated 21 May 1991. This is a patent and apparent mistake committed by the Financial Commissioner since as was noted hereinbefore, the Additional Collector had elaborately ruled upon the structure and scheme of Section 81 of the Act and found that no conditional order of eviction was made, no warrant of possession issued and an order of eviction and simultaneous vesting of land in the Gaon Sabha passed by the Revenue Assistant. While it is true that the Additional Collector had noticed the order of the LG of 21 May 1991 while allowing the appeal of the petitioner here, the order passed by that authority cannot possibly be viewed or interpreted as resting solely on that order.



70. The Financial Commissioner then proceeding to take notice of the order of 22 November 1993 passed by the LG has observed that since the situation has completely changed, the order of the Additional Collector would merit being set aside. The Financial Commissioner appears to have been swayed more by the “*changed situation*” which in his understanding came into existence upon the LG passing the impugned order of 22 November 1993 than the imperative to examine the validity of the order of the Additional Collector in light of the provisions made in the Act. The Court is constrained to observe that the Financial Commissioner clearly appears to have lost sight of the obligation to decide the statutory appeal strictly on the basis of the provisions of the Act and bearing in mind the undisputable fact that the order of the LG was made purely in an administrative capacity acting pursuant to the directions issued by this Court. In light of the aforesaid discussion and the conclusions arrived at and recorded above, the impugned order passed by the Financial Commissioner is established to suffer from patent errors of fact and law and would thus merit being set aside.

N. ORDER OF THE LG

71. Turning then to the order of the LG and as was noticed in the earlier parts of this decision, the LG in terms of the order impugned had framed two principal issues for consideration. The first related to the validity of the vesting of the land in the Gaon Sabha. Dealing with this issue, the LG has firstly taken into consideration the reports submitted by various revenue officials who stated that the entries in the khasra girdawaris on which the



claim of the petitioner being in adverse possession rested had been prepared at the behest of the petitioner acting in collusion with revenue officials. He takes note of the findings contained in these reports which had found that no cultivation in fact had been carried out on the parcel of land in question in the period in question. However, it becomes relevant to note that these reports related to the validity of the claim of the petitioner resting on the factum of being in adverse possession of the land. This claim, admittedly, had come to be rejected and the same had attained finality. Even before this Court, no arguments were addressed in support of the claim resting on adverse possession. This obviously since the petitioner had subsequently rested his case on a sale deed purportedly executed in its favour by the original landholders. The issue of whether the land could be otherwise viewed as having legally come to vest in the Gaon Sabha in accordance with the provisions of the Act was a question which remained unanswered.

72. The order of the LG, furthermore, falters and falls on account of a more patent and manifest error when that authority proceeds to record that it is the order of 10 April 1986 which “*remains the last order extant.*” This crucial mistake is based on the assumption that the appeal taken against that order by the petitioner stood dismissed on 14 October 1991. As has been noted by this Court earlier, while that appeal had come to be dismissed for default on that date, it had subsequently come to be revived with the order of 14 October 1991 being recalled and the appeal restored on 5 January 1993. Had the appeals papers been requisitioned for perusal and the prayer in that regard as made by the petitioner acceded to, perhaps this fatal error would not have occurred. The failure on the part of the LG to notice these W.P. (C) 114/1994 & 3520/1994



critical facts has led to the impugned order being liable to be held as suffering from an apparent and patent error.

73. Proceeding further to evaluate the question of the title of the petitioner, the LG has taken note of the reports submitted which alleged that manipulations had been made in the relevant revenue records with the petitioner and departmental authorities acting in collusion. Departmental proceedings also appear to have been initiated against various revenue officials in this respect. However, those enquiries and reports pale into insignificance once it is recognised and appreciated that those could at best have been read as evidence in support of the claim of the petitioner of being in adverse possession and his entitlement to the grant of benefits under Section 85 of the Act. That claim, as was noted above, had ultimately come to be abandoned by the petitioner. Even otherwise and if one were to go by these reports, all that stood established was that land was no longer being utilized for agricultural operations and that large scale colonization had occurred. Although the question of the impact of these developments on the rights as claimed by the petitioner under the provisions of the Act was one which directly arose, the same was also not considered or ruled upon.

74. Insofar as the validity of the sale deed of 2 April 1983 is concerned, the LG has rested his decision on the report of the Financial Commissioner who had doubted the veracity of the copies produced since they appeared to have been reproduced on stamp paper valued at Rs. 2. The conclusion as noted by the Financial Commissioner in this respect had failed to bear in mind the consistent case of the petitioner of the same being merely



“certified copies” of the sale deed as opposed to being copies of the original instrument. The LG has simply proceeded to endorse the findings as recorded by the Financial Commissioner in this respect without any further scrutiny being directed on this crucial issue. The Court deems it apposite to record that the previous reports which had been submitted to the LG and were taken into consideration while passing the order of 21 May 1991 and relevant parts whereof have been extracted above, had alluded to the sale deed having been duly produced by the petitioner for perusal as well as the explanation proffered in connection with the delayed registration of the instrument.

75. The record reflects that the respondents as well as the various complainants who appeared against the petitioner had in unison asserted that the original landholders had sold the parcel of land in dispute to Land Trade Corporation in January and March 1970. It was in the aforesaid background that it was contended that no valid sale could have thereafter been made in favour of the petitioner in April 1983. This since, according to the respondents, the original landholders had conveyed all right in the subject property to Land Trade Corporation and nothing further remained to be conveyed to the petitioner here. Before the LG were also statements of various individuals who had alleged that the said corporation had in turn carved out the land into small plots and developed a residential colony called Indira Enclave. Faced with such a situation and in light of the conflicting stands which were struck, all that was required was for requisite enquiries being addressed to the office of the concerned Registering



Authority in order to ascertain the veracity of the rival claims. No such steps to verify the competing claims appear to have been undertaken.

76. The LG while dealing with the assertion of the petitioner pertaining to events which occurred during the 1984 riots has unceremoniously brushed aside the explanation proffered by observing that the original sale deed was asserted to have been “*conveniently burnt*”. This Court is of the considered opinion that the plea taken by the petitioner in this respect clearly merited a more detailed evaluation especially when the entire record pertaining to that ignominious period was in the possession of the respondents. The Court is constrained to enter these observations since the reports and the material that was taken into consideration by the LG while passing the initial order of 21 May 1991 had alluded to the ransacking and burning of the gurudwara and the killing of various sewadars in the course of those riots. The Court also takes note of the communication of the DDA of 3 November 1994 which mentions the amount spent by that authority towards the repair of damage caused to the gurudwara during those riots. This was therefore not a plea which warranted rejection unsympathetically or at least did not merit a more detailed examination.

77. Insofar as the order of 21 May 1991 passed by the LG is concerned, it has been held that those were merely administrative proceedings which were founded on “*favourable reports*”. The insinuation which underlies the use of that expression cannot be countenanced by this Court. The LG appears to have lost sight of the fact that even that decision was based on reports submitted by responsible government officials. In any case the order



ultimately passed and impugned does not refer to or rely upon material or evidence which may taint or sully the recommendations that were submitted or establish them to have been guided by extraneous considerations.

78. In the end it may only be observed that in law, doubts or insinuations can never be recognised as being a valid or justifiable ground to debunk a civil claim that otherwise arises for determination. A determination of the civil rights of parties cannot be left to rest on speculation and suspicion. In any case, an order, administrative or judicial, which is essentially conjectural cannot withstand judicial scrutiny.

O. NOTE OF GUIDANCE

79. Having found that the impugned orders passed in these two writ petitions cannot be sustained in light of the conclusions recorded above, the Court is of the opinion that while remitting the matter to the respondents for deciding the claim of the petitioner afresh, it would be apposite to briefly delineate the issues which would merit consideration.

A. At the outset it may be noted that the record bears out that two competing sets of sales in respect of the same parcel of land form the fulcrum of the controversy. While the respondents have rested their decisions on the sale deed executed in favour of Land Trade Corporation in January and March 1970, the petitioner had set up a claim based on a sale deed purportedly executed on 2 April 1983. Having waded through the entire record, the Court has been unable to find any material which may have even remotely indicated any



enquiries having been addressed to the registering authorities to verify the veracity of these two sales. The respondents have not founded their decisions on any evidence or material which may have, in fact, established that the sale relied upon by the petitioner was either fictitious or non-existent. It was incumbent upon the respondents to definitively rule on the validity of the rival transactions rather than leaving it hanging on tenuous and conjectural observations. The respondents would thus have to necessarily undertake the requisite enquiry in this respect before deciding the matter on remand.

B. Intrinsically connected with these two competing sales is the issue of the validity of the transfer which is asserted to have been made by the original landholders. It becomes pertinent to note that the Act in terms of Section 33, lays in place certain restrictions on the transfer of a holding by a bhumidhar. The consequences of a transfer being made in violation of those restrictions are provided for in Sections 42 of the Act. That provision renders the transferee liable to ejectment on the suit of the Gaon Sabha or the landholder as the case may be. Neither of the two transfers have been tested on the anvil of the aforementioned provisions. This would also be an aspect which would merit consideration.

C. The vesting of the land in the Gaon Sabha can be recognised in law as being valid provided the respondents are able to establish that the petitioner was legally evicted from the land in question. As is evident from the findings recorded hereinabove, the procedure as



contemplated under Section 81 of the Act was clearly not followed. The provisions of Section 86A were clearly not attracted when the notice for drawl of proceedings came to be issued requiring the attendance of the petitioner before the competent authority on 30 October 1985. On that date, no order of the land vesting in the Gaon Sabha either existed or stood in place thus enabling the respondents to invoke Section 86A. The respondents have failed to prove that any other notice was ever issued either after possession was taken over in December 1985 or between 10 April 1986 [the order of the Revenue Assistant reiterating the decision of the land to vest in the Gaon Sabha] and 26 November 1993 [when the former came to be set aside in appeal]. The aforesaid facts which are clearly borne out from the record would warrant fresh consideration. Additionally, whether proceedings are liable to be drawn afresh, the petitioner divested of any vestige of title, if such be recognisable in law, is also an aspect which is left open for the consideration of the respondent.

D. The facts placed on the record bear out that the land parcel had already been colonised by the time the petitioner claimed cultivatory and possessory rights. There is ample evidence of the entire parcel of land having been colonised and Indira Enclave existing when the impugned proceedings were drawn. The khasra girdawaris on which the petitioner founded its case have been disbelieved in light of the various enquiries which were undertaken and upon conclusion of which the respondents came to record findings of the same having been prepared as part of a collaborative scheme hatched by the



petitioner and various revenue officials. Learned counsels for respective parties have failed to draw the attention of the Court to any reliable evidence which may have indicated when the petitioner or the vendees of Land Trade Corporation entered upon the land. The possible avenues existing in law for redressal of a situation where an entire area falling within the ambit of the Act has come to be colonised is an aspect which would merit due consideration by the respondents. An answer to these issues would have an important bearing on the rights of parties as claimed in this petition.

- E. The respondents would also be obliged to confer consideration on the issue of whether the land was liable to be treated as having becoming “vacant” in terms of the provisions made in the Act. The answer to the aforesaid would clearly be dependent upon whether the interest of the original bhumidhars could be said to have been extinguished. This aspect would also be of significance while adjudicating on the issue whether the land was rightly possessed by the Gaon Sabha and resolved to be placed for construction of a hospital.

P. OPERATIVE DIRECTIONS

80. Accordingly, and for all the aforesaid reasons, these writ petitions are allowed. The impugned orders of 22 November 1993 and 25 March 1994 passed by the LG and the Financial Commissioner are hereby quashed. The matter shall in consequence stand remitted to the Financial Commissioner, in the first instance, for considering the appeal preferred against the order dated 26 November 1993 passed by the Additional Collector afresh and in W.P. (C) 114/1994 & 3520/1994



light of the observations made hereinabove. Bearing in mind the fact that this dispute has festered since 1981 and the two writ petitions have remained pending on the board of this Court right from 1994, the Financial Commissioner is requested to expedite the disposal of the appeal which will stand revived in light of this judgement. The authority shall endeavour to conclude proceedings preferably within a period of two months with due notice to all concerned parties.

81. The validity of the allotment of the land parcel for the hospital presently proposed to be set up by the respondents shall be taken up for consideration by the LG once a decision is rendered by the Financial Commissioner in accordance with the directions issued hereinabove.

82. The claim of the petitioner to be inducted into possession of the land in dispute has not been dealt with in these writ petitions since that is an issue which would necessarily have to be considered and decided in the pending RFA.

YASHWANT VARMA, J.

JANUARY 4, 2022
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