



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

% **Reserved on: 18th May, 2022**
Pronounced on: 22nd July, 2022

+ **W.P.(C) 2332/2019 & CM APPL. 10856/2019**

SHRI HARISH SAINI

..... Petitioner

Through: Mr. Praveen Suri, Advocate

versus

NATIONAL CAPITAL TERRITORY OF DELHI AND ORS

..... Respondents

Through: Mr. Sameer Vashisht, ASC (Civil)
with Ms. Sanjana
Nangia, Advocate for GNCTD

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under Article 226/227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

"a) The respondents nos. 1 to 3 be directed to consider the representation dated 22.1.2019 made by the petitioner and to withdraw the order dated 14.10.2005 regarding vesting of land with the Gaon Saba under Section 81 of the Delhi Land Reforms Act;

b) Set aside the order dated 14.10.2005, passed in case no. 59/SDM/RA/(PN)/2004 under Section 81 of the Delhi Land



Reforms Act, titled as 'Gaon Sabha Hastal versus Shiv Nath Tyagi & others.'

c) Cost of the present proceedings may be awarded in favour of the petitioner....."

FACTUAL MATRIX

2. Shri Shiv Nath Tyagi, Shri Rakesh Kumar, Shri Umesh Kumar, Shri Sat Prakash and sons of late Shri Hardwari Lal, were bhumidars of properties bearing Khasra numbers 8/8/1/ (0-12), 8/7/2 (1-16), 9/2 (1-4), 13 (4-16), 14 (4-16), 15 (4-16) of Village Hastal, Near Uttam Nagar, New Delhi-110059.

3. All the aforesaid persons sold certain lands to various other persons including, one Shri Jagbir Singh who further sold a part of land in the form of plots bearing no. 107 to 111 out of Khasra Number 8/7/2 to one Shri Surinder Kumar Chawla in the year 1987. On 24th January, 2000, the land in question was then purchased by the petitioner from the legal heirs of Shri Surinder Chawla.

4. On the said land, proceedings under Section 81 of the Delhi Land Reforms Act, 1954 (hereinafter referred as the 'DLR Act') have been initiated by the Gaon Sabha, Hastal against Shri Shiv Nath Tyagi and others arising out of order passed in '***Gaon Sabha Hastal v. Shiv Nath Tyagi***'. On 14th September, 2004, the learned Sub Divisional Magistrate (hereinafter referred as the 'SDM') passed an order and directed the landowners:

"to restore the above said land into agricultural use within three months, failing which the land shall be decreed, to be vested in Gaon Sabha without any further notice and the respondents shall be ejected there from."



5. On 14th October, 2005, the learned SDM/Revenue Assistant had passed an order, observing as under:

“the respondents have not complied with the orders and the land in question has not been brought back into cultivatory use. The Boundary walls had been constructed on agricultural land and houses have been built up there. Since the respondents have not complied the orders mentioned above and have violated the provisions under Section 81 of the Delhi Land Reform Act, the abovementioned Khasras and land will be vested in the Gaon Sabha with immediate effect.”

The petitioner, however, claims to be unaware of the said proceedings at that point in time.

6. An injunction petition was filed by Shri Shiv Nath Tyagi and others against Shri Jagbir Singh, Shri Rajesh Kumar and the petitioner, who was a prospective buyer at that time, due to illegal construction and demolition of Shiv Nath's part of land, in the year 1999. On 22nd November 2018, the suit so filed was dismissed by Civil Judge, District-Central, Tis Hazari Court.

7. Thereafter, on 3rd January 2019, the petitioner applied for the copy of the Khatoni for getting the property mutated in his name, with the intention to sell the property. However, he came to know that all the properties pertaining to the Khasra numbers mentioned above had already been vested in the Gaon Sabha vide order dated 14th October, 2005.

8. On 22nd January, 2019, the petitioner made a detailed representation, explaining the facts to respondent nos. 2 and 3 for recalling the order dated 14th October, 2005, along with all the documents



of sale, which was sent through speed post on the very same day. But no reply/ order was sent by the respondents. The petitioner is therefore, before this Court by way of instant petition for recalling of order dated 14th October 2005.

SUBMISSIONS

9. Learned counsel appearing on behalf of the petitioner submitted that the land in question had already been urbanized vide notification bearing no. F.9/59-R&S/Delhi dated 7th January 1960, under Section 507(a) of the Delhi Municipal Corporation Act, 1957 (hereinafter referred as 'the DMC Act'). It is submitted that if the area where the property falls has become a town or urban area then the provisions of DLR Act are not applicable.

10. Learned counsel appearing on behalf of the petitioner submitted that the learned SDM has failed to appreciate that after urbanization of a village or rural area, the provisions of the DLR Act are not applicable to the said village or rural area. The same has been reiterated in the judgment of the Delhi High Court in *Trikha Ram vs. Sahib Ram* 69 (1997) DLT 749.

11. Learned counsel appearing on behalf of the petitioner submitted that urbanization notice itself makes the provisions of the DLR Act inapplicable in view of the Section 3 of the said Act. As per the record filed by the petitioner herein, it is clearly evident, that the area i.e. Shiv Vihar, Hatstal, Uttam Nagar, New Delhi is a town area and plots have already been developed, therefore, the urban area plots cannot be vested in Gaon Sabha as an agricultural land.



12. It is vehemently submitted by learned counsel for the petitioner that the property was purchased by the petitioner out of the colony named as Shiv Vihar, in which all the development had already taken place.

13. It is submitted that at the time of the purchase, the petitioner was not informed that the proceedings under Section 81 of the DLR Act had already been initiated pertaining to the property in question. Therefore, he was left with no option but to file the writ petition as the respondents, despite the representation, had not passed any order or not taken any action thereon.

14. The petitioner also filed an affidavit dated 17th February 2022, to bring on record the notification bearing no. F.9/59-R&S/Delhi dated 7th January 1960, issued under Section 507 of the DMC Act, 1957 as per which, Village Hastal had been urbanized.

15. *Per Contra*, learned Additional Standing Counsel appearing on behalf of the respondent no. 3 (SDM), vehemently opposed the submissions advanced by the learned counsel for the petitioner and submitted that vide order dated 14th September, 2004, the learned SDM, Patel Nagar had passed a conditional order under Section 81 of DLR Act and directed them to restore the land comprising Khasra Nos. 8/7/2 (1-16), 8/1(0-12), 9/2(1-4), 13(4-16), 14(4-16), 15(4-16) situated within the revenue estate of village Hastal into agricultural use, failing which the same would be vested in the Gaon Sabha. It is submitted that due to non-compliance with the same, a final order dated 14th October, 2005 was then passed by the learned SDM, vesting the land to the Gaon Sabha.

16. Learned ASC appearing on behalf of the respondent no. 3 submitted that once an order of vesting of land under Section 81 of DLR



Act is passed and copy of the order is sent to the concerned Tehsildar for changing the entries in revenue record with respect to vested Khasra number into the name of Gaon Sabha, then the only option left to the person, whose land is vested, is to prefer an appeal against the order of SDM before Deputy Commissioner/District Magistrate as provided in section 185 of DLR Act.

17. Learned ASC submitted that in view of the above legal position, the petitioner has an alternative remedy. The petitioner has approached this Court without exhausting the alternative remedy provided under the statute i.e. Section 185 of the DLR Act.

18. It is submitted that once the land has been vested to Gram Sabha, any subsequent transfer of vested land is illegal, as transferor of the vested land does not have any title in the property, so vested under Section 81 of the DLR Act. It is submitted that any notification under Section 507 of the Delhi Municipal Corporation Act, 1954 (hereinafter as “DMC Act”) for declaring any revenue land to be urbanized land, does not have retrospective application. Therefore, notification subsequent to vesting order of land does not have any effect to the land so vested prior to notification.

19. Learned ASC vehemently submitted that the judgments relied upon by the petitioner are not applicable to the facts and circumstances of the instant case.

20. It is therefore submitted that the instant petition be dismissed on two grounds, *first*, that the petitioner has an alternative remedy under Section 185 of the DLR Act and *second*, that the notification has been issued after the proceedings/order under Section 81 of the DLR Act had been



initiated. It is submitted that the instant petition is nothing but a gross misuse of the process of law and is, therefore, liable to be dismissed.

21. Respondent No.2 has filed a short counter affidavit dated 21st March, 2022 in response to the affidavit filed by the petitioner dated 17th February 2022, stating therein that the notification relied upon by the petitioner, issued under Section 507 (a) of the DMC Act, 1957, only contains a few Khasra Numbers of Village Hastsal which were taken over by the MCD for the development of the Village. The land in question which the petitioner has averred in the Writ Petition does not find mention in the said notification and thus is of no aid to the petitioner.

22. Learned ASC further submitted that, Village Hastsal was actually urbanized vide notification which was published in the gazette on 28th January 2019. As per the notification, Village Hastsal appears at Serial No. 55 (DMC) Zone K-1. Therefore, the contention made by the petitioner is incorrect, false and mischievous.

23. The learned counsel for the petitioner, in reply to the aforesaid counter affidavit, filed a rejoinder on 20th January 2020. Relevant paragraphs of which are mentioned as follows:

*"2. That the area in question is being urbanized as well as in view of the order of the Hon'ble High Court of Delhi in the case titled as "**Trikha Ram vs Sahib Ram**" having citation (1997)DLT749 wherein the Hon'ble High Court of Delhi has held that urbanization notice itself make the provisions of Delhi Land Reforms Act as inapplicable in view of the section 3 of the Delhi Reforms Act and furthermore it has again reiterated by this Court in case titled as "**Shakuntala Devi and Ors vs Kulbhushan Lai and Ors**", in "**Narain Singh and Ors vs Financial Commissioner**" and "**Indu Khorana vs Gram Sabha and Ors**" that the provisions of the Delhi Reforms Act as*



not applicable.

3. It has been further held in "Shri Neelpadmaya Consumer Products Pvt. Ltd. vs Satyabir and Ors." having citation 227(2016)DLT654 that if an area has become town as provided in the definition clause of Delhi Reform Act then the area if still not urbanized the provisions of the Delhi Reform Act are not applicable to the said area."

24. Heard learned counsel for the parties and perused the record.

ANALYSIS AND FINDINGS

25. In order to appreciate and decide the instant case in hand, this Court will have to examine the relevant provisions of DLR Act and Rules, the DMC Act and the Delhi Development Act (hereinafter referred as 'DDA'), as applicable to the case at hand. The provisions are discussed hereunder:

Delhi Land Reforms Act, 1954

i. ***Section 3(12)***

““improvement” means with reference to a holding-

(i) a dwelling house erected on the holding by the tenure-holder for his own occupation or any other constructions erected or set up by him on the holding for purpose connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming;

(ii) any work which adds materially to the value of the holding and is consistent with the purposes aforesaid, which if not executed on the holding, is either executed directly for its benefit or is, after execution, made directly beneficial to it; and subject to the foregoing provisions of this clause, includes-

(a) the construction of wells, water channels and other works for the supply or distribution of water for the purposes aforesaid;

(b) the construction of works for the drainage of land or for



the protection of land from floods or from erosion or other damage by water;

(c) the reclaiming, clearing, enclosing, leveling or terracing of land;

(d) the erection in the immediate vicinity of the holding otherwise than on the village site, of buildings required for the convenient or profitable use or occupation of the holding;

(e) the construction of tanks or other works for the storage of water for purposes aforesaid;

(f) the planting of trees and groves on the holding;

(g) the renewal or reconstruction of any of the foregoing works or such alternations therein or additions thereto, as are not of the nature of mere repairs:

Provided that such water channels, embankments, enclosures, temporary wells, or other works as are made by a tenure-holder in the ordinary course of his requirements for purposes aforesaid, shall not be deemed to be improvement: ”

ii. Section 3(13)

““land” except in Sections 23 and 24, means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming and includes-

(a) buildings appurtenant thereto,

(b) village abadis,

(c) grovelands,

(d) lands for village pasture or land covered by water and used for growing singharas and other produce or land in the bed of a river and used for casual or occasional cultivation,

but does not include-

land occupied by buildings in belts of areas adjacent to Delhi town, which the Chief Commissioner may by a notification in the Official Gazette declare as an acquisition thereto; ”

iii. Section 81.

“Ejectment for use of land in contravention of the provisions of this Act.



[(1)] A Bhumidhar or an Asami shall be liable to ejectment on the suit of the Gaon Sabha or the landholder as the case may be, for using land for any purpose other than a purpose connected with agriculture, horticulture or animal husbandry, which includes pisciculture and poultry farming, and also to pay [damages] equivalent to the cost of works which may be required to render the land capable of use for the said purposes.

[(2)] Notwithstanding anything contained in sub-section (1) the Revenue Assistant also may, on receiving information or on his own motion. Eject the Bhumidhar or Asami, as the case may be, and also recover the damages referred to in sub-section (1), after following such procedure as may be prescribed].”

iv. Section 84.

“Ejectment of persons occupying land without title.

[(1)] A person taking or retaining possession land otherwise than in accordance with the provisions the law for the time being in force, and-

*(a) where the land forms part of the holding of a Bhumidhar or Asami without the consent of such Bhumidhar or Asami, or
(b) where the land does not form part of the holding of a Bhumidhar or Asami without the consent of the Gaon Sabha, shall be liable to ejectment on the suit of the Bhumidhar, Asami or Gaon Sabha, as the case maybe, and shall also be liable to pay damages.”*

v. Section 185.

“Cognizance of suits, etc. under this Act.

(1) Except as provided by or under this Act no court other than a court mentioned in column 7 of Schedule I shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, take cognizance of any suit, application, or proceedings mentioned in column 3 thereof

(2) Except as hereinafter provided no appeal shall lie from an order passed under any of the proceedings mentioned in column 3 of the Schedule aforesaid.



(3) An appeal shall lie from the final order passed by a court mentioned in column 7 in the proceedings mentioned in column 3 to the court or authority mentioned in column 8 thereof.

(4) A second appeal shall lie from the final order passed in an appeal under sub-section (3) to the authority, if any, mentioned against it in column 9 of the Schedule aforesaid.

vi. **Section 150(3)(a).**

“Establishment and incorporation of Gaon Sabha and Gaon Sabha Area .

[(3) If the whole of a Gaon Sabha area ceases to be included in rural areas as defined in the Delhi Municipal I Corporation Act, 1957, by virtue of a notification under section 507 of that Act, the Gaon Sabha constituted for that area shall thereupon stand dissolved and on such dissolution,-

(a) all properties, movable and immovable, and all interests of whatsoever nature and kind therein including moneys held in Gaon Sabha Area Fund, vested in the Gaon Sabha immediately before such dissolution.

shall, with all rights of whatsoever description, used, enjoyed or possessed by such Gaon Sabha, vest in the Central Government;”

Delhi Land Reform Rules, 1954

i. **Rule 19.**

“Application for use of holding for industrial purposes (Section 23)- an application to the Deputy Commissioner by a Bhumidhar for the use of his holding or part thereof for industrial purposes shall, besides giving the particulars enumerated in Rule 20, also state the area, if any, that will be left with the applicant, for cultivation. This factor as also the genuineness of the need for the industrial undertaking shall be duly considered by the Deputy Commissioner in making his recommendations to the Chief Commissioner for the grant of permission, which as far as possible, shall not be accorded at the expense of agricultural interests of rural areas.”

**ii. Rule 21A.**

“Use of land for non-agricultural purposes (Section 81)- the Patwari, as soon as he learns that the provisions of Section 23 have been violated and any land has been used for non-agricultural purposes, submit report to the Tahsildar mentioning therein:—

- (i) The name, parentage and address of the Bhumidhar or Asami;*
- (ii) The number and area of the plots affected;*
- (iii) The name of the village and circle;*
- (iv) The use to which the land has been put;*
- (v) The date of conversion of land for non-agricultural purposes; and*
- (vi) Approximate amount of expense involved in making land capable of use for agricultural purposes before.*

On receipt of the report from the Patwari or on receipt of information otherwise, the Tahsildar shall cause summary enquiry about the nature of the conversion of land and the approximate amount of expense involved in making the land capable of use for agricultural purposes as before, if it is possible. He shall then submit the papers to the Revenue Assistant for orders.

iii. Rule 21-B.

“Disposal of reports by Revenue Assistant (Section 81)- The Revenue Assistant, on receipt of the report referred to in Rule 21-A or on receipt of information otherwise regarding user of land for non-agricultural purposes shall issue notice to the parties in L.R. Form 48 and shall call upon them to show cause why action should not be taken against them under Section 81.

To every such suit or proceedings Gaon Sabha shall be made a party.

After hearing the parties and after making such further enquiries as he thinks fit, the Revenue Assistant shall pass suitable orders thereon.”



The Delhi Municipal Corporation Act, 1957

i. Section 507.

“Special provisions as to rural areas—

Notwithstanding anything contained in the foregoing provisions of this Act,—

*the Corporation with the previous approval of the *** Government, may, by notification in the Official Gazette, declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification that portion shall be included in and form part of the urban areas;”*

The Delhi Development Act, 1957

i. Section 22.

“Nazul Lands – (1) The Central Government may, by notification in the Official Gazette and upon such terms and conditions as may be agreed upon between that Government and the Authority, place at the disposal of the Authority all or any developed and undeveloped lands in Delhi vested in the Union (known and hereinafter referred to as “nazul lands”) for the purpose of development in accordance with the provisions of this Act.”

37. The lands which are subject matter of the DLR Act are those lands which fall within the definition of ‘land’ contained in Section 3(13), and such lands include all types of lands, for example abadi lands, lal dora lands, which are used for industrial purposes, village pasture lands etc., in a village or rural area. Therefore, land in rural area or village area, which is the subject matter of jurisdiction under the DLR act also includes land which is used for non-agricultural purposes.

38. The Coordinate Bench of this Court in “***Gaon Sabha Nanakheri v. Sucheta Memorial Trust***”, 2018 SCC OnLine Del 11431 has held as



under:

“3. Therefore, it is not as if the land which is comprised in village or rural area only will mean agricultural land or that the DLR Act only applies to agricultural land. DLR Act applies to rural areas or village areas which fall within the jurisdiction of the DLR Act.”

“4. The irrefutable conclusion is that the lands which are the subject matter of the DLR Act will include all types of lands in a rural area or village i.e. an area which is not urbanized, either because of notification under Section 507 of the Delhi Municipal Corporation Act, 1957 or that area which becomes a developed area for nonagricultural purposes because of being included in a developed area under Section 12 of the Delhi Development Act, 1957.”

39. The same is further made clear by a bare reading of Section 3(12) of the DLR which defines ‘improvement’. Under the said section, improvement is defined to include a dwelling house or other constructions for the purposes connected with agricultural and related activities, including wells, water channels, tanks etc. Therefore, proceedings under Section 81 of the DLR Act will be attracted only when the land is being used for any other purpose than what has been specified above.

40. The DMC Act separately defines rural areas and urban areas. In the notification issued under Section 507A of DMC Act, the areas mentioned therein cease to be rural areas and thereafter do not enjoy certain benefits. The effect of notification under Section 507 of the DMC Act is that the areas in question are considered to be urban areas and not rural areas. The effect of the notification is to transform the rural areas to urban areas and accordingly, the said areas cease to enjoy the benefits which are available



to rural areas under the DLR Act.

41. With regard to the land in question in the instant Writ Petition, the Urban Development Department, Government of the National Capital Territory of Delhi vide notification bearing number F.7/79/ADLB/2016/CD-000383132/3827-3841, dated 16th May 2017 declared eighty-nine villages as Urban areas, which also included the petitioner's property, under Section 150(3)(a) of the DLR Act. Thereafter, in exercise of the powers conferred by sub-section (1) of section 22 of the DDA, the Central Government placed the areas of the villages, which had become vested in the Central Government on the urbanization of the villages, at the disposal of the Delhi Development Authority for the purpose of development and maintenance vide notification dated 28th January 2019. Therefore, the Village Hastal was urbanized by notification dated 16th May 2017, under Section 150(3)(a) of the DLR Act and not vide notification dated 7th January 1960, issued under Section 507 (a) of the DMC Act, as claimed by the petitioner.

42. In the instant writ petition, a conditional order was passed on 14th September 2004, whereby, the landowners at that point were directed to reinstate the land to agricultural use within three months of the said order. On failure to comply with the aforementioned conditional order, the SDM passed the final order of vestment to the Gaon Sabha, under Section 81 of the DLR Act, on 14th October 2005.

43. It is pertinent to note here that once the order of vesting has been made under section 81 of the DLR Act and a final order has been passed, the conferment of title of the land so vested is complete. The vesting of the land in the Gaon Sabha settles all title and interests therein in that



body authoritatively without any further act or deed. It is clear from the bare reading of the aforesaid section that a bhumidar/occupant is divested of all rights in the land, if he fails to use the said land in a way as stipulated under section 3(13) of the DLR Act.

44. The Coordinate Bench of this Court in **“Sh Ajay Singhal vs Government Of NCT Of Delhi & Ors.” 2022 SCC OnLine Del 360** held as follows:

“ L. The order of vesting made under Section 81 and 82 of the Act divests and deprives the owner or the occupier of all rights existing in the land. Vesting results in the Gaon Sabha acquiring absolute title and rights over the land free from all encumbrances. It is also important to underline and accord due prominence to the indubitable consequence that the rights of the erstwhile owner or occupier stand effaced and obliterated by operation of law.”

45. Therefore, any subsequent transfer of the vested land is illegal irrespective of the fact that possession has been taken or not by the Gaon Sabha. The transferor has therefore, no right or title in the property vested under Section 81 of the DLR Act. The order of vesting is granted finality under the DLR subject only to, it being successfully assailed in an appeal or revision. Thereafter, vide notification dated 16th May, 2017, issued under Section 150 (3)(a) of the DLR Act, Gaon Sabha areas of the villages mentioned in the said notification had been vested in the Central Government, which declared those rural areas as urban areas. The Central Government then, vide notification dated 28th January 2019, vested the said areas of the villages to the Delhi Development Authority for further development.



CONCLUSION

46. In the present case, the notification relied upon by the petitioner, which has been issued under the DMC Act in the year 1960, cannot come to his rescue as the Khasra numbers mentioned in the notification relied upon, do not include the Khasra numbers of the land belonging to the petitioner. *Albeit*, the land in question did become urbanized on 16th May, 2017 vide notification bearing number F.7/79/ADLB/2016/CD-000383132/3827-3841 under Section 150(a) of the DLR Act. Subsequent to which the land vested in Gaon Sabha was dissolved and all properties which stood vested in that authority/Gaon Sabha was vested in the Central Government. All interests, obligations, liabilities of the Gaon Sabha flowing from contracts, hence, stood taken over and assumed by the Central Government. The Central Government has further vested the land to the DDA, vide notification dated 28th January 2019, and now, as per the said notification, land in question belongs to the DDA for further development. The petitioner now has no title to the land in question, since vide order dated 14th October 2005, the petitioner was divested of his rights and interests in the said land in the year 2005 itself, and absolute transfer of title was vested in the Gaon Sabha as soon as the aforesaid order was passed under section 81 of the DLR Act. Therefore, after perusing the facts of the case, this Court is of the considered opinion that no grounds have been made out for the interference of this Court under Article 226/227 of the Constitution of India.

47. Keeping in view the above facts and circumstances, arguments advanced and material perused, this Court does not find any merit in the instant petition. Accordingly, the instant petition is dismissed along with



the pending application, if any.

48. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JULY 22, 2022
gs/ms

