



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

% **Judgment reserved on: 21 JANUARY 2022**
Judgment pronounced on: 04 FEBRUARY 2022

+ W.P.(C) 5627/2020, CM APPL. 20379/2020 (Stay)

SANVIK ENGINEERS INDIA PVT.LTD & ANR. Petitioners

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI THROUGH: ITS DEPARTMENT OF URBAN
DEVELOPMENT & ANR. Respondents

+ W.P.(C) 7887/2020, CM APPL. 25859/2020 (Stay)

SH AJAY SINGHAL Petitioner

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI & ORS. Respondents

+ W.P.(C) 7952/2020, CM APPL. 25990/2020 (Stay)

SH AJAY SINGHAL Petitioner

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

+ W.P.(C) 7198/2021, CM APPL. 22697/2021 (Stay)

BLUE BIRD PROPERTIES PVT LTD NOW BLUEBIRD
PROPERTIES LLP. Petitioner

versus

GOVT OF NCT OF DELHI & ORS. Respondents

Through: Mr.Jai Sahai Endlaw and Mr.Subhoday Banerjee, Advs.
for petitioner in W.P.(C) 5627/2020.



Mr.Ishan Sanghi and Mr.Satyendra Kumar, Advs. for petitioner in W.P.(C) 7887/2020, 7952/2020 & 7198/2021.

Mr. Anupam Srivastava, ASC for GNCTD with Mr.Dhairya Gupta, Adv. for respondent nos. 1 to 3 and for respondents in W.P.(C) 5627/2020.

Mr.Rishikesh Kumar, ASC for GNCTD with Ms. Sheenu Priya in W.P.(C) 7952/2020 & 7198/2021.

Mr.Naushad Ahmed Khan, ASC for GNCTD with Mr.Zahid Khan and Ms.Manisha Chauhan, Advs. in 7198/2021.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

1. This batch of writ petitions raise the important issue of the impact of notifications issued under the Delhi Municipal Corporation Act, 1957¹ and the Delhi Development Authority Act, 1957² on proceedings taken under Sections 81 and 82 of the Delhi Land Reforms Act, 1954³. While the petitioners in W.P.(C) 5627/2020 and 7887/2020 have assailed orders passed by the appellate authority in respect of closure of proceedings initiated under Section 81 of the DLR, the petitioners in W.P.(C) 7952/2020 & 7198/2021 have assailed proceedings in relation to appeals which have been preferred by the Gaon Sabha. Those appeals are directed against

¹ DMC Act

² DDA Act

³ DLR



orders passed by the Revenue Assistants re-opening and reviewing final orders which had directed the eviction of the occupiers of the land and consequential vesting in the Gaon Sabha.

2. The issue of the applicability of the DLR once a notification comes to be issued under the DMC or the DDA Acts has fallen for consideration in the past before this Court and the consistent line which has been struck in those judgments is that once the land comes to be urbanised and forms part of a notification issued under the DMC or the DDA Acts, the provisions of the DLR would cease to have any application. The principle enunciated in those decisions essentially rests on the definition of land as comprised in Section 3(13) of the DLR which defines “land” to mean that which is held or occupied for purposes connected with agriculture, horticulture or animal husbandry including pisciculture, poultry farming and further expands and brings within its scope buildings appurtenant thereto, village abadis, grove lands and lands reserved for village pasture or covered by water. Section 3(13) excludes lands occupied by buildings in belts of areas adjacent to Delhi town and which may by notification be declared as an acquisition thereto. The body of precedent which has evolved on the aforesaid question originates from the authoritative pronouncement by the Division Bench of this Court in **Smt. Indu Khorana Vs. Gram Sabha & Ors.**⁴ The line of decisions which have come to be rendered thereafter have essentially followed the basic principles enunciated in **Indu Khorana**. However, the present batch of writ petitions and the facts which obtain therein, give rise

⁴ 2010 SCC OnLine Del 1334



to questions such as the impact of those notifications on pending proceedings including in relation to appeals that may have been preferred and remain pending on the board of the competent appellate authorities. The respondents also place reliance on two circulars dated 3 July 2013 and 4 February 2020 to contend that notwithstanding the issuance of notifications under the DMC or the DDA Act, proceedings once commenced would be liable to be taken to their logical conclusion. With the assistance of learned counsels for respective parties who have appeared in this batch and to facilitate enunciation of the legal position which would flow in various situations that may arise, the Court has classified them under the following four broad heads: -

CASE 1 Where proceedings have not been initiated and notifications under the DMC/DDA Acts intervene.

CASE 2 Where although proceedings have been initiated or a conditional order made, notifications come to be issued before a final order directing ejectment and vesting is passed.

CASE 3 Where the notifications come to be issued after a final order of ejectment and vesting comes to be made.

CASE 4 Where a notification comes to be issued during the pendency of an appeal or revision against a final order at the behest of the landholder or Gaon Sabha.

3. At the outset it may be clarified that the impact of Section 150(3)(d) of the DLR on pending proceedings and the effect of that provision on proceedings which may be pending is being considered and ruled upon



solely in the backdrop of Sections 81 and 82 of the DLR. This decision is not intended to be any essay on the ultimate effect or influence that it may have on other proceedings which may be launched or were pending at the relevant time. Having set out the basic background of this batch, it would be appropriate to briefly notice the facts of the individual writ petitions which the Court proposes to dispose of by means of the present judgement.

W.P.(C) 5627/2020

4. The petitioner here purchased agricultural land by way of a sale deed dated 5 May 2010. Proceedings under Section 81 of the DLR in respect of that land are stated to have commenced consequent to the submission of a report dated 22 March 2016 by the Halqa Patwari alleging that construction activity was being undertaken on agricultural land. On the receipt of that report, an interim order of restraint came to be issued on 31 March 2016. In terms of that order, the petitioners were called upon to restore the land to its original agricultural status failing which further proceedings under Section 81 would be taken. The petitioner submitted a reply to the aforesaid show cause notice asserting therein that the constructions which were being raised merely amounted to an “improvement” as defined in Section 3(12) of the DLR and would thus not amount to an unauthorised construction. It was further asserted that the land in any case had come to be included in a notification issued under Section 507 of the DMC Act on 16 May 2017 and that consequently no justification existed for drawl of proceedings under Section 81. Accepting the contentions as set forth, the SDM by an order of 15 June 2019 closed the proceedings and held that Section 81 would no



longer be applicable by virtue of the land having become urbanized and as evidenced consequent to its inclusion in the notification issued under Section 507 of the DMC Act. The respondents thereafter preferred an appeal before the Deputy Commissioner. During the pendency of that appeal, it is further disclosed that the area in question had come to be included in a notification dated 28 January 2019 issued by the Ministry of Housing and Urban Affairs and classified as part of the “Land Pulling Policy” as framed by the DDA. The writ petition itself came to be preferred during the pendency of that appeal. During the pendency of the present writ petition, the District Magistrate by an order of 1 September 2020, proceeded to allow the appeal of the Gaon Sabha holding that since proceedings under Section 81 had come to be initiated prior to the issuance of the notification under Section 507, the SDM had clearly erred in closing the proceedings. The District Magistrate while allowing the appeal also took into consideration a report of the Patwari dated 18 December 2019 to record that a farmhouse had been constructed on the land in question thus clearly constituting a violation of the Act. The Collector accordingly proceeded to set aside the order of 15 June 2019 and directed vesting of the land in the Gaon Sabha. The order of 1 September 2020 has since been assailed in these proceedings consequent to an amendment application which was moved in these proceedings and was allowed by the Court.

W.P.(C) 7887/2020

5. On 6 February 2007, a conditional order under Section 81 of the Act came to be passed by the Revenue Assistant against the petitioner here noting that since the land was being used for purposes other than those
W.P.(C) 5627/2020 and connected matters

Page 6 of 81



specified under Section 3 (13) of the DLR, penal action as contemplated under Section 81 was liable to be taken. The aforesaid proceedings as initiated, were ultimately dropped by the SDM in terms of an order dated 14 November 2019. The SDM essentially held that as per the status report submitted by the Halqa Patwari, the land was being used for the purposes of animal husbandry and that the said activity would not contravene the provisions of the DLR. Post closure of those proceedings, a notification under Section 507 of the DMC Act came to be issued on 21 November 2019 and the land in question stood included in that notification. After promulgation of the aforesaid notification, the Gaon Sabha preferred an appeal on 5 August 2020. During the pendency of that appeal and more particularly on 25 September 2020 a notification under Section 22 of the DDA Act came to be issued including the subject land. It is further asserted in the writ petition that as per the MPD 2021, the land of village Kapashera, where the property in question is situate, has been duly earmarked and approved for residential use. The petitioner further asserts that the land of village Kapashera came to be made part of the MPD 2021 in terms of notifications dated 10 May and 18 June 2013. It is in the aforesaid backdrop that the petitioners have asserted that no justification exists for drawl of proceedings under Section 81 of the Act. When the writ petition was initially entertained, an interim order was passed on 13 October 2020 with the Court noting a preliminary and jurisdictional challenge raised by the petitioner to the Deputy Commissioner (Revenue) entertaining the appeal. On 18 January 2021 the aforesaid issue was answered against the petitioner and the appellate authority concluded that the BDO by virtue of *W.P.(C) 5627/2020 and connected matters*



being the custodian of Gaon Sabha land was entitled to prefer the appeal notwithstanding the village having become urbanised. The appellate authority also based its decision on the circular of 4 February 2020 to hold that proceedings are liable to be continued notwithstanding the issuance of the notifications under the DMC and DDA Acts. It accordingly directed the impleadment of the DDA and the Union Government as essential parties to those proceedings. The aforesaid order has been assailed by way of an amendment application moved in these proceedings which has been allowed by this Court.

W.P.(C) 7952/2020

6. In this matter, proceedings against the petitioner came to be initiated based on a report purportedly submitted by the Halqa Patwari on 25 May 1999. On the basis of that report, a conditional order of restraint came to be made against the petitioner on 27 July 2001. The record further bears out that the respondents upon noting that the petitioner had failed to abide by that conditional order, proceeded to pass a final order on 24 July 2002 directing the ejectment of the petitioner and the vesting of the land in the Gaon Sabha. The petitioner thereafter appears to have filed a review petition. That review petition, which is styled as being under Section 151 of the Civil Procedure Code, is what was ultimately allowed by the respondents in terms of an order dated 14 November 2019. The SDM has while allowing the said petition placed reliance upon the judgement rendered by this Court in **Gur Partap Singh Vs. UOI**⁵ to hold that once

⁵ 2004 (78) DRJ 621



the land had become urbanized, the proceedings under Section 81 of the Act are not maintainable. He has also significantly taken cognizance of the fact that the order of eviction had not been executed so far and since the petitioner had continued to remain in possession, *"the suit is barred by law of limitation as per provisions of DLR Act, 1954"*.

7. From a reading of the aforesaid order and from the contemporaneous material which has been placed on the record by the petitioners, it transpires that the land in question came to be included in a notification issued under Section 507 of the DMC Act dated 21 November 2019. The petitioners have also rested their case on a notification of 25 September 2020 issued under Section 22 (1) of the DDA Act to contend that since the land had evidently become urbanized, the proceedings under Section 81 as drawn by the respondents were liable to be quashed and set aside. The petitioners also placed reliance upon the fact of the inclusion of this land in the MPD 2021 as per the notifications of 10 May and 18 June 2013. The respondents preferred an appeal against the order of 14 November 2019 rendered by the SDM on 5 August 2020. The writ petition assails the proceedings of that appeal.

W.P.(C) 7198/2021

8. In this writ petition, on 1 July 2004, a conditional order came to be passed against the petitioner in terms of the report submitted by the Halqa Patwari on 7 March 2004. According to the respondents since the petitioner failed to comply with that order, final orders of ejectment and vesting of the land in the Gaon Sabha came to be passed on 24 November



2004. Asserting that the aforesaid order had been made ex-parte, the petitioner is stated to have preferred an application for recall. That application came to be dismissed on 13 April 2007. The said order was thereafter assailed by the petitioner by filing a review petition purporting to be under Section 114 read with Section 151 of the Civil Procedure Code. That review petition came to be allowed by the SDM in terms of an order of 14 November 2019. Here again the SDM has taken note of the fact that since the land had come to be included in a notification issued under Section 507 of the DMC Act, bearing in mind the principles enunciated by the Court in **Gur Partap Singh**, the proceedings under Section 81 were liable to be closed. The SDM has further proceeded to observe that although the land had vested in the Gaon Sabha on 24 November 2004, since that order had not been executed yet and the land had remained in the possession of the petitioner, *"the suit is barred by law of limitation as per provisions of DLR Act, 1954"*. The SDM consequently proceeded to record that the proceedings under Section 81 of the Act were not maintainable and dropped further proceedings.

9. It becomes pertinent to note that undisputedly the notification under Section 507 of the DMC Act on which reliance is placed in the aforesaid case came to be issued on 21 November 2019 and thus evidently after the land had come to vest in the Gaon Sabha. Similarly, the petitioner here too relies upon a notification of 25 September 2020 issued under Section 22 (1) of the DDA Act to contend that since the area had become urbanised and had ceased to answer to the description of land as defined in Section 3(13), the proceedings under Section 81 of the DLR were liable to be set aside.

W.P.(C) 5627/2020 and connected matters *Page 10 of 81*



The respondents in July 2020 preferred an appeal aggrieved by the order of 14 November 2019. The petitioners upon being placed on notice of that appeal, are stated to have filed objections asserting that once the land had come to be included under a notification issued under Section 507 of the DMC Act and Section 22 (1) of the DDA Act, the appeal as preferred at the behest of the respondents was not maintainable. It was as proceedings rested thus, that the instant writ petition came to be preferred before this Court.

PETITIONERS SUBMISSIONS

10. Mr. Endlaw learned counsel appearing for the petitioner in W.P.(C) 5627/2020 has urged that once the land comes to be included and falls within the purview of the DMC or the DDA Acts, proceedings under Section 81 would clearly not be maintainable. Learned counsel contended that the SDM had taking cognizance of the aforesaid facts, rightly dismissed the proceedings in terms of the order of 15 June 2019. According to Mr. Endlaw, the inclusion of the land in notifications issued under the DMC or the DDA Acts is irrefutable evidence of the land having become urbanised and consequentially the provisions of the DLR ceasing to apply. Learned counsel drew the attention of the Court to the undisputed fact of the land coming to be covered by a notification issued under Section 507 of the DMC Act on 16 May 2017. According to Mr. Endlaw, once the land had come to be comprised in that notification, there remained no justification for continuance of the proceedings under Section 81 and that the SDM had correctly proceeded to drop all proceedings in terms of the



order of 15 June 2019. The view taken by the appellate authority and as embodied in the impugned order of 1 September 2020 is assailed firstly on the ground that it has chosen to place reliance upon a report of the Halqa Patwari which was not even conveyed to the petitioner. It was vehemently contended that the petitioners were never confronted with that report or afforded an opportunity to question and assail the findings recorded therein. More importantly, learned counsel contended that merely because proceedings under Section 81 may have been initiated prior to the issuance of a notification under Section 507 of the DMC Act, that alone would not justify the continuance of proceedings once the land had come to be urbanised.

11. Mr. Endlaw further submits that the reliance placed by the respondents on the Circular of 04 February 2020 is clearly misplaced since that cannot possibly be read as mandating the continuance of proceedings in respect of land which may have become urbanized merely on account of the fact that they had been initiated prior to the issuance of that notification. According to Mr. Endlaw, the respondents are proceeding on the incorrect assumption that the aforesaid circular mandates the continuance of proceedings under Section 81. Learned counsel contends that a careful reading of the circular would establish that it does not even deal with the issue primarily and a mere stray observation or sentence appearing therein would not justify the stand taken by the respondents here.



12. In support of his submissions, learned counsel has firstly placed reliance upon the following principles as laid down by the Court in **Indu Khorana:-**

“3. The stand of the petitioner before the Single Judge was that the land in question had been urbanized vide notification issued by the MCD dated 24.10.1994 under Section 507 of the Delhi Municipal Corporation Act, as such the area in question ceased to be a rural area and the revenue authorities had no jurisdiction to deal with the matter and impugned order was liable to be set aside. In support of his contention, the learned Counsel for the petitioner had relied upon the judgment of *Trikha Ram v. Sahib Ram and Anr.* MANU/DE/0968/1997 : 69 (1997) DLT 749 and *Madho Prasad v. Shri Ram Kishan and Ors.* 2001 (VII) AD [Delhi 72]. Both the aforesaid cases are decided by a Single Bench of this Court.

7. In *Trikha Ram v. Sahib Ram and Anr.* (supra), it has been categorically held that once by virtue of notification issued under Section 507(a) of Delhi Municipal Corporation Act the land is declared to be an urban land, it could no longer be classified as village abadi land within the definition of land under Delhi Land Reforms Act and the provisions of Delhi Land Reforms Act would not be applicable. Similar view is taken in *Madho Prasad v. Sh. Ram Kishan and Ors.* (supra). During arguments, learned Counsel for the petitioner has also referred to two more judgments of this Court, one is W.P.(C) No. 479/2004 *Ashok Kumar v. Union of India and Ors.*, decided on 12.04.2004 by Single Judge of this Court wherein it is held that once land ceased to be rural area, provisions of DMC Act would apply.

8. The other judgment is CS(OS) No. 379/2003 *Sh. Sis Ram and Ors. v. Sh. Lallu Singh and Ors.*, decided on 09.05.2006 wherein a suit for partition was filed in respect of an abadi land of a village Mauzpur, Delhi which by notification issued by Municipal Corporation of Delhi approved by Central Government in exercise of powers conferred by Clause (a) of Section 507 of MCD Act, 1957 was declared as an urban area. The court held that once, on urbanization of land by the said notification, the same will not be governed by provisions of Delhi Land Reforms Act.

11. We thus hold that once rural area is urbanized by issuance of notification under Section 507(a) of the Delhi Municipal Corporation Act, 1957, provisions of Delhi Reforms Act will cease to apply. The reference stands answered accordingly. The file be placed before the



Acting Chief Justice for sending the same to the learned Single Judge for deciding the case on merits.”

13. Leaned counsel has also pressed into aid the decision of this Court in **Sushma Kapoor Vs. Government of NCT of Delhi**⁶ and, more particularly, to the following observations as appearing therein: -

“7. The Court further takes note of the consistent line taken in the body of precedents on this subject starting from the decision of the Division Bench in Smt. Indu Khorana v. Gaon Sabha and the subsequent decisions which were noticed in Sanraj Farms which have explained the concept of “land” as liable to be understood and interpreted under the provisions of the Act. The ratio of those decisions with respect to the applicability of the Act must be recognized to be that land in order to be made subject to proceeding under the Act must answer to the description as set forth in the Section 3(13) of the Act. As would be manifest from a reading of Section 3(13) of the Act, it is only land held or occupied for purposes connected with agriculture, pisciculture, horticulture, animal husbandry or poultry farming which could be subjected to proceedings under the Act. The decisions noted above have proceeded further to hold that once land has become urbanized and thus found to have been put to a use or purpose other than those mentioned above, it would clearly fall outside the purview and ambit of the Act. The judgments of the Court in unequivocal terms hold that once the property ceases to answer to the description of land as defined under the Act, proceedings can neither be initiated and if commenced must abate.

9. Once the fact of the land being covered under the notification of 18 June 2013 and covered under a Low Density Residential Area is admitted to the respondents, it is manifest that the proceedings initiated under the Act cannot be sustained. The Court also fails to find any merit in the contention of Ms. Takiar that the revenue authorities would still be empowered to enquire whether constructions were being raised without the requisite permissions as contemplated under the DMC or DDA Acts. Those enactments incorporate sufficient measures for enquiry and enforcement and independently confer powers in connection therewith upon statutory authorities other than revenue officials.”

⁶ 2021 SCC OnLine Del 5170



14. Mr. Endlaw has lastly placed reliance on a circular of 03 July 2013 to submit that a Cabinet decision of the Delhi Government had been unequivocally taken advising all revenue officials to desist from interfering in or exercising powers over an area which had become urbanized by virtue of its inclusion in a notification issued under Section 507 of the DMC Act. It was emphasized that the Government of NCT had clearly highlighted the fact that the main focus of the DLR must stand restricted to prevention of unauthorized colonization of agricultural land. According to Mr. Endlaw, the said circular would clearly override any internal memorandum that may have come to be issued by a subordinate revenue official and which would include the communication of 04 February 2020. According to Mr. Endlaw, the circular of 03 July 2013 which communicates the Cabinet decision of 15th June 2013 had rightly explained the position as would flow from the provisions of the DLR and that consequently the decision as taken by the respondents is clearly in violation of the same and in any case would not sustain.

15. Mr. Sanghi, learned counsel who has appeared in the connected matters on behalf of the petitioners, has essentially adopted the submissions advanced by Mr. Endlaw. Mr. Sanghi has additionally drawn the attention of the Court to its decision rendered in **Utsav Exim Ltd. Vs. Government of NCT of Delhi**⁷ to submit that issues which arise in the present batch had been duly noticed by this Court and that the stand as taken by the respondents here is clearly unsustainable in law.

⁷ 2021 SCC OnLine Del 5506



SUBMISSIONS OF THE RESPONDENTS

16. Mr. Srivastava, learned Additional Standing Counsel appearing for the respondents, has on the other hand, laid emphasis on the facts pertaining to W.P.(C)5627/2020 and submits that undisputedly proceedings under Section 81 had been initiated prior to the land coming to be included in a notification issued under the DMC Act. According to learned counsel, as long as the infraction which leads to the initiation of proceedings under Section 81 has occurred prior to the inclusion of the land in a notification issued under the DMC or the DDA Acts, it would be wholly incorrect to assert that proceedings are liable to be dropped. Mr. Srivastava submits that the only situation where proceedings may not be liable to be initiated or set in motion would be where the land comes to be included in a notification issued under the aforementioned two statutes even before any steps may have been initiated under Section 81 of the DLR.

17. According to Mr. Srivastava, holding otherwise would amount to according retrospective operation to the notifications issued under the DMC and the DDA Acts. It was his categorical submission that once proceedings are established to have been initiated prior in point of time, those must be permitted to be taken to their logical conclusion notwithstanding the subsequent inclusion of the land in notifications evidencing urbanization.

18. Mr. Srivastava, learned ASC, has then placed reliance upon the provisions made in Section 150(3)(d) of the DLR to submit that the statute clearly does not envisage an abatement of proceedings and it would therefore be wholly incorrect to assume that proceedings must be brought to W.P.(C) 5627/2020 and connected matters



a close merely because the land has come to be urbanized subsequently. It was submitted that the right of appeal which stands statutorily conferred cannot be said to be lost merely upon the issuance of the notifications under the DMC or the DDA Acts.

19. Mr. Srivastava has sought to distinguish the judgment in **Indu Khorana** by pointing out that in the facts of that particular case, the Court concluded that proceeding under Section 81 of the DLR Act could not be maintained since they had been initiated almost sixteen years after the land had come to be urbanized and included in a notification under section 507.

20. Mr. Srivastava has thereafter invited the attention of the Court to the judgment in **Narain Singh and Ors. Vs. Financial Commissioner and Ors.**⁸ and more particularly to the following observations as appearing therein: -

“4. We have enquired from the counsel for the appellant that if his second contention aforesaid, of the land, as far back as in the year 1982 i.e. since prior to the sale in favour of the appellants and commencement of the proceedings aforesaid by the respondents No. 2 and 3, having ceased to be governed by the Reforms Act, will not, both the proceedings aforesaid i.e. under Section 85 of the Reforms Act and of mutation, be non est since their very inception in as much as, the proceedings before the Revenue Authorities are maintainable only so long as the land is governed by the Reforms Act. It was further enquired whether not in the aforesaid scenario the disputes between the parties relating to title and possession of the land, will have to be determined by the Civil Court.

5. The counsel for the appellants agrees.”

⁸ LPA No.591/2008



21. Continuing along this thread, he has additionally placed reliance on the judgment of the Court in **Delhi Development Authority and Ors. Vs. Pushpa Lata and Ors.**⁹

“32. The counsel for the respondents/plaintiffs during the hearing also made a contention that after the urbanization of the year 1966, the appellant/defendant DDA could not have challenged the order dated 30th September, 1959 of the Revenue Assistant before the authorities under the Land Reforms Act and were justified in approaching the Civil Court. However on being reminded that the authorities before whom the order dated 30th September, 1959 of the Revenue Assistant could have been challenged under the Land Reforms Act, continue to exist even now in as much as it is not as if the Act has been repealed, the said argument was not pressed any further.”

22. Learned counsel has also placed reliance on the decision rendered by the Court in **Ishwar Singh Vs. Sunder Singh and Ors.**¹⁰ in support of his submissions resting upon section 150(3) of the DLRA and the relevant parts whereof are extracted hereinbelow: -

“14. Vehement contention of the learned Counsel for the Appellant is that even after a notification has been issued under Section 507(a) of the DMC Act, the Gaon Sabha constituted in that area would stand dissolved but notwithstanding the said dissolution the provisions of Sections 84 to 86A of the DLRA would continue to apply and this is clear from the reading of Sub-section (f) of 150(3) of the DLRA.

15. This provision of law is contained in Chapter v. of the DLRA. It relates to the establishment and incorporation of the Gaon Sabha and Gaon Sabha Areas. Sub-Section 3 to 5 of Section 150 have been inserted by Section 28 of the DLRA (Amendment Act 1965). The reason for the insertion of these subsections as is evident from the Statement of Objects and Reasons appended to the bills are thus:

⁹ RSA No. 2/2012

¹⁰ 2011 SCC OnLine Del 1654



.... After the commencement of the Delhi Municipal Corporation Act, 1957, a number of villages which were under the jurisdiction has been urbanised and the Delhi Panchayat Raj Act, 1954 has ceased to apply to these area. However, the Gaon Sabha being corporate bodies continue to exist in these areas even though they have no panchayat functions. There is no provision in the existing law to wind up these bodies in the urbanised area but as an interim measure the management of their property in those areas has been entrusted to the Deputy Commissioner. It is necessary to make provisions for winding up the gaon sabhas. In urbanised areas and for the disposal of their assets and liabilities.

Sub-Section 3 enacts that if the whole of the Gaon Sabha ceases to be included in rural area as defined in the DMC Act 1957 by virtue of a notification under Section 507 of that Act, the Gaon Sabha constituted for that area shall thereupon stand dissolved. This Sub-section in fact lays down in Clauses (a) to (f) the consequences which shall accrue on the dissolution of the Gaon Sabha on the whole area for which it was constituted ceasing to be included in rural areas. A whole some reading of this section (as quoted hereinabove) shows that the nomenclature of the Gaon Sabha and Gaon Sabha Areas have been changed and hereinafter all references made to Gaon Sabha and Gaon Panchayats would be construed as references to the Central Government. Section 150(3) specifically postulates that once a Gaon Sabha Area ceases to be included in rural area (as defined in the DMC Act, by virtue of a notification under Section 507(a) of the said Act) the Gaon Sabha will stand dissolved. Clause (e) states that the provisions of this Act (DLRA) would apply in relation to land in such Gaon Sabha, not being land vested in the Central Government under Clause (a). Sections 150(4) & (5) of the DLRA also clarify the position. After a portion of the Gaon Sabha ceases to be included as a rural area or the size of the Gaon Sabha is reduced as a result of a portion ceasing to be included in a rural area, the said portion or area will be reconstituted. The whole of Section 150 in fact deals with the establishment and incorporation of the Gaon Sabha and Gaon Sabha Area. It does not in any manner affect the provisions of Section 507(a) of the DMC Act which read with the ratio and the proposition of law laid down in Trikha Ram (supra) and Indu Khorana (supra) has held that once a rural area is declared to be urban, it is excluded from the purview of the “village abadi land” and being no longer “land” as defined in the DLRA it is excluded from its purview. Section 150 of the DLRA does not in any manner impinge upon this provision of law.”



23. Mr. Rishikesh Kumar, learned Additional Standing Counsel, who has addressed submissions on W.P.(C)7877/2020 apart from adopting the submissions addressed by Mr. Srivastava as noted above has also rested the case of the respondents on the circular of 04 February 2020 to submit that proceedings under Section 81 of the DLR Act would continue notwithstanding the issuance of a notification under Section 507 of the DMC Act. On the basis thereof, it was submitted that the proceedings as taken and pending before the appellate authority cannot be set to be without jurisdiction.

24. Mr. Naushad Khan, learned Additional Standing Counsel appearing in W.P.(C) 7952/2020 & W.P.(C) 7198/2021, has submitted that acceptance of the submissions advanced on behalf of the petitioners would amount to recognising the notifications issued under the DMC and the DDA Acts as operating retrospectively and which would clearly fall foul of settled legal principles. According to learned counsel, the mere fact that the land has subsequently come to be urbanised, cannot detract from the competence of the respondents to initiate proceedings under Section 81. It was submitted that the same also does not appear to be the statutory intent of those two enactments. It is these rival submissions which fall for consideration.

25. For the purposes of evaluating the submissions addressed, it would at the outset be apposite to notice the relevant provisions of the DLR. Section 3(13) of the DLR reads as under: -

“3. Definitions

(13) “land” except in sections 23 and 24, means land held or occupied for purpose connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming and includes-

W.P.(C) 5627/2020 and connected matters

Page 20 of 81



- (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 building in belts or areas adjacent to Delhi town, which the Chief commissioner may by a notification in the official Gazette declare as an acquisition thereto.”

26. Sections 81 and 82 of the DLR which form the bedrock of the disputes which have arisen are extracted hereinbelow: -

“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 land holder, 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 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”

82. Decree for ejectment under section 81. - (1) A decree for ejectment under Section 81 may direct the ejectment of Bhumidhar or Asami from the whole or part of the holding as the Court, having regard to the circumstances of the case, may direct.

(2) The decree shall further direct that, if the Bhumidhar or Asami repairs the damage within three months next after the decree, the same shall not be executed except in respect of costs.”



27. Section 150(3) of the DLR deals with the consequences which would flow upon a Gaon Sabha area coming to be included in a notification issued under Section 507 of the DMC Act. That provision reads as under: -

“(3) if the whole of a *Gaon Sabha* Area ceases to be included in rural areas as defined in the Delhi Municipal 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 *Gaon Sabha*, vest in the Central Government;
- (b) all duties, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the *Gaon Sabha* before such dissolution shall be deemed to have been incurred, entered into or engaged to be done with or for the Central Government;
- (c) all rates, taxes, fees rents and other charges due to the *Gaon Sabha* immediately before such dissolution shall be deemed to be due to the Central Government;
- (d) all suits, prosecutions and other legal proceedings instituted or which might have been instituted by or against the *Gaon Sabha* may be continued or instituted by or against the Union of India;
- (e) the provisions of this Act shall apply in relation to lands in such *Gaon Sabha* Area, not being lands vested in the Central Government under clause (a), subject to the codification that references therein to *Gaon Sabha* and *Gaon Panchayat* shall be construed as references to the Central Government;
- (f) notwithstanding anything contained in clause (b) of sub-section (2) of section 1, the provisions of sections 84, 85, 86A and 87 and any other provision of this Act relating to ejectment of persons shall apply in relation to lands vested in the Central Government under clause (a) subject to the modification that references therein to *Gaon Sabha* and *Gaon Panchayat* shall be construed as references to the Central Government.”



28. It would also be apposite to notice Sections 190 and 191 of the DLR which are reproduced hereinbelow: -

“190. Application of certain Acts to the proceedings of this Act

(1) Unless otherwise expressly provided by or under columns 4 and 6 of Schedule I of this Act, the provisions of the Indian Court Fees Act, 1870 (7 of 1870), the Code of Civil Procedure, 1908 (5 of 1908), and the Indian Limitation Act, 1908 (9 of 1908), shall apply to the proceedings under this Act.

(2) The provisions of the General Clauses Act, 1897 (10 of 1897) shall *mutatis mutandis* apply, as far as may be, to this Act in the same manner as they apply to a Central Act.

191. Rules in general

(1) Every power to make rules given by this Act shall be deemed to include the power to provide for-

- (a) imposing limits of time within which things to be done for the purposes of the rules must be done, with or without powers to any authority therein specified to extend limits imposed;
- (b) the procedure to be followed in suits, applications and other proceedings under this Act, in cases for which no specific provisions has been made therein;
- (c) the duties of any officer or authority having jurisdiction under this Act the procedure to be followed by such officer and authority;
- (d) the time within which applications and appeals may be presented under this Act, in cases for which no specific provision in that behalf has been made herein;
- (e) the fees to be paid in respect of appeals and applications under this Act, in cases for which no specific provisions in that behalf has been made herein;
- (f) The application of the provisions of the "Indian Limitation Act, 1908 to applications, appeals and proceedings under this Act, other than those mentioned in Schedule I;
- (g) the delegation of powers conferred by this Act on the Chief Commissioner or any other authority, officer or person; and



- (h) the transfer of proceedings from one authority or officer to another.
- (2) All rules made under this Act, shall be published in the Official Gazette and shall, unless some later date is appointed, come into force on the date of such publication
- (3) All rules made under this Act shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made and shall be subject such modifications as Parliament may make during the session in which they are so laid or the session immediately following.”

29. Pursuant to the rule making power conferred to give effect to the provisions of the DLR, the Delhi Land Reforms Rules, 1954 were framed. It would be relevant to notice Rules 21A and 21B of those rules which are reproduced hereinbelow: -

“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 mentioned therein: -

- (i) The name, parentage and address of the Bhumidhar or Assami;
- (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 purpose 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.

21B. 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 use 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 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.”

30. The procedure for taking of possession is set forth in Rule 32 which reads as follows: -

“32. Execution of ejectment order in such cases (Section 47)-

- (1) Every application for ejectment of a tenure holder or a person in possession otherwise than in accordance with law shall, except when it is second or subsequent application for the execution of the same order, be accompanied by a certified copy of the order.
- (2) The delivery of possession in execution of a decree or order for ejectment shall be made by the Kanungo, who, on his arrival in the village, shall send notice to the person to be ejected, and, in case there is any person holding from him to such other person also. The ejectment shall be made on the spot, and for each field separately in the manner provided in Rule 35 of Order XXI of the first Schedule of the Code of Civil Procedure (V of 1908), in the presence of the person to be ejected if he is in the village, and of two villagers whose names should be mentioned in the Kanungo's report. If the person to be ejected is not present in the village or refuses to attend, the Kanungo shall record the fact in his report. If at the time of the delivery of possession there exists on the holding any ungathered crop or any tree of which the value has not been determined by the court, the Kanungo shall state in his report the kind of crop and his estimate of its probable value, and the kind, number and estimated age and value of the trees. The report shall be signed by the decree holder or his agent to whom delivery is made, and by the person to be ejected, if present and the parties shall be directed to apply, if they so desire, to the court executing the decree, for the settlement of the value of such crops and trees. If the Patwari is present in the village, the Kanungo shall ask him to attend, and shall see



that the Patwari makes a record of the ejectment in his diary. In case any party refuses to sign the report, the Kanungo shall record the fact. The Kanungo shall submit his report with all the particulars mentioned above to the court issuing the order for delivery of possession.”

31. The procedure for hearing of appeals and proceedings that may be instituted before the revenue authorities is prescribed in Rule 53 which reads as follows: -

“53. Procedure to be observed in cases under Chapter III of the Act. --

(1) In hearing and deciding, suits, applications and other proceedings under Chapter III of the Act, the revenue courts shall follow mutatis mutandis the procedure laid down in Appendix VI.

(2) The provisions regarding appeals, revisions and review contained in Appendix VI shall apply to the orders passed by Revenue Courts under Chapter III of the Act..”

32. The procedure is then elaborately dealt with and set forth in Appendix VI. Paragraph 14 describes the procedure which is liable to be followed where proceedings may have come to be decided ex-parte. It reads as under: -

“14. No appeal from orders passed ex-parte or by default. Rehearing on proof of good cause for non-appearance.

No appeal shall lie from an order passed under paragraph 13 ex-parte or by default.

But in all such cases, if the party against whom judgment has been given appears either in person or by agent (if a Plaintiff, within 15 days from the date of such order, and if a defendant within 5 days after such order has been executed or at any earlier period), and shows good cause for his non-appearance, and satisfies the officer making the order that there has been a failure of justice, such officer may, upon such terms as to costs or otherwise as he thinks proper, revive the case and alter or rescind the order according to the justice of the case.

Provided that no such order shall be reversed or altered without previously summoning the party in whose favor judgment has been given to appear and be heard in support of it.”



33. The subject of delivery of possession of immovable property is covered by Paragraph 22 which reads as follows: -

“22. Delivery of possession of immovable property: -

When an order is made that a person be put in possession of any immovable property the officer making the order any deliver over possession in the same manner, and with the same powers in regard to all contempt resistance and the like, as may be lawfully exercised by the Civil Courts in execution of their own decrees.”

34. The subject of appeals, references and revisions is governed by Paragraphs 23,24 and 25, which are extracted hereinbelow: -

“23. Courts to which appeals lie: -

(1) Appeals shall be under the Act as follows: -

(a) to the Settlement Officer or the Record Officer from orders passed by any Assistant Settlement Officer or Assistant Record Officer, respectively.

(b) to the Deputy Commissioner or to the Additional Collector specially empowered in this behalf from orders passed by the Revenue Assistant, an Assistant Collector or Tahsildar;

(c) to the Chief Commissioner from orders passed by the Deputy Commissioner, Additional Collector, Settlement Officer or Record Officer.

(2) No appeal shall be allowed from a non-judicial order not connected with settlement passed by the Deputy Commissioner.

24. First appeals. --

unless an order is expressly made final by the Revenue law for the time being in force, an appeal shall lie to the Court authorised under paragraph 23 to hear the same from every original order passed in any proceedings held under the provisions of the Act.

25. Second appeals. --

A second appeal shall lie to the Chief Commissioner from an order deciding an appeal under clause (a) or clause (b) of sub-paragraph (1) of paragraph 23 on any of the following grounds and no other, namely;

(i) the decision being contrary to law or to some usage having the force of law.

(ii) the decision having failed to determine some material issue of law or usage having the force of law (iii) a substantial error or defect in the procedure as laid down in the law for the time being



in force or prescribed thereunder, which may possibly have produced error or defect in the decision of the case upon the merits.”

35. The limitation for preferment of appeals is prescribed in paragraph 26 which reads thus: -

“26. Limitation for appeals: -

(1) No appeal to the Settlement Officer, the Record Officer or the Deputy Commissioner or to an Additional Collector empowered to hear appeals shall be brought after the expiration of 30 days from the date of the order complained of unless otherwise specially provided by or under the Act or the Revenue law for the time being in force.

(2) No appeal or second appeal to the Chief Commissioner shall be brought after the expiration of 60 days from the date of the order complained of.”

36. The validity of proceedings initiated under Section 81 as coming to be impacted by the subsequent urbanization of land has fallen for consideration before this Court previously on many occasions. **Indu Khorana** was dealing with a situation where proceedings under the DLR came to be initiated in respect of land after its inclusion in a notification issued under Section 507 of the DMC Act. After noticing the decisions which had been rendered in the past on that question, the Court held as follows: -

“7. In *Trikha Ram v. Sahib Ram & Anr. (supra)*, it has been categorically held that once by virtue of notification issued under Section 507(a) of Delhi Municipal Corporation Act the land is declared to be an urban land, it could no longer be classified as village abadi land within the definition of land under Delhi Land Reforms Act and the provisions of Delhi Land Reforms Act would not be applicable. Similar view is taken in *Madho Prasad v. Sh. Ram Kishan & Ors. (supra)*.

During arguments, learned counsel for the petitioner has also referred to two more judgments of this court, one is W.P.(C) No. 479/2004 *Ashok Kumar v. Union of India & Ors.*, decided on 12.04.2004 by Single Judge W.P.(C) 5627/2020 and connected matters

Page 28 of 81



of this court wherein it is held that once land ceased to be rural area, provisions of DMC Act would apply.

8. The other judgment is CS(OS) No. 379/2003 *Sh. Sis Ram & Ors. v. Sh. Lallu Singh & Ors.*, decided on 09.05.2006 wherein a suit for partition was filed in respect of an abadi land of a village Mauzpur, Delhi which by notification issued by Municipal Corporation of Delhi approved by Central Government in exercise of powers conferred by Clause (a) of Section 507 of MCD Act, 1957 was declared as an urban area. The court held that once, on urbanization of land by the said notification, the same will not be governed by provisions of Delhi Land Reforms Act.

Above is the consistent view of this court as has been noted above in four different judgments mentioned above.

9. The question of charging Property Tax by the MCD in an urbanized area has been considered and concluded by Division Bench of this Court in *Brig. S.C.L. Malik v. MCD*, 61 (1996) DLT 661 (DB).

In the above case, the petition was filed seeking quashing of the levy and demand of General Tax on the farm premises of the petitioner situated in village Khirki, tehsil Mehrauli, New Delhi, known as 36, Sainik Farms, New Delhi. In the aforesaid case also notification dated 23.05.1963 was issued by the Delhi Administration in exercise of powers conferred by Clause (a) of Section 507 of the Act, the Corporation with the previous approval of the Central Government had declared that localities mentioned in schedule appended therewith and forming part of the rural areas shall cease to be the rural areas including petitioner's land.

The question of levy and demand of the General Tax on the said land of the petitioner arose. The Division Bench of this Court perused the relevant statutory provisions of Delhi Municipal Corporation Act, 1957 in this regard and relied upon the judgment of another Division Bench decision of this Court in *Naresh Kumar v. Union of India & Ors.* 56 (1994) DLT 746 and held that house alone and not the large tract of agricultural land over which it stood would be liable to be taxed. The relevant portion of the said judgment is as under:-

“When the legislature exempts ‘agricultural lands’ and buildings used substantially for agricultural purposes from the purview of the property tax as stated by us and makes only ‘dwelling houses’ located therein subject to tax, it will not, in our opinion, be permissible for the assessing authority to take the entirety of the agricultural land - whatever be its extent - on which the building or farm house is located, for purposes of levying property tax. We are of the view that only such land around the



dwelling house which can be said to be reasonably required for the beneficial enjoyment of the dwelling house or farm house, must alone be the subject matter of the tax. This will again depend on the facts and circumstances of each case to be decided by the assessing authority or by the appellate authority before which the matters may be pending. We notice that the Delhi Act does not contain any definition of ‘appurtenant land’ and therefore the question as to what is ‘appurtenant land’ in the context of each dwelling house will have to be determined with reference to the size and extent of the dwelling house and on the basis of what can be said to be the land reasonably required for the beneficial enjoyment of the dwelling house. The remaining part of the agricultural land cannot be subjected to property tax.” The Division Bench concluded that in case of a farm house the above said will be the principles for assessing the building and appurtenant land to tax.”

10. The view taken by the Division Bench is binding on this Bench. No sufficient reason has been shown to us for taking a different view other than what has already been taken by Division Bench earlier. As regards the issues under the Income Tax Act about the capital gains, being exempt when agricultural lands are acquired and what would be the position while valuing the capital cost of the land under the Wealth Tax etc. are concerned, these issues do not directly arise in this case. As and when such issues will arise, the concerned authorities would examine the same in accordance with law.

11. We thus hold that once rural area is urbanized by issuance of notification under section 507(a) of the Delhi Municipal Corporation Act, 1957, provisions of Delhi Reforms Act will cease to apply. The reference stands answered accordingly. The file be placed before the Acting Chief Justice for sending the same to the learned Single Judge for deciding the case on merits.”

37. It would also be relevant to notice the judgement rendered by a learned Judge in **Shri Neelpadmaya Consumer Products Pvt. Ltd Vs. Satyabir**¹¹. In **Neelpadmaya**, the Court was ceased of a suit for specific performance. One of the questions which was raised was whether the agreement between the parties for transfer of the suit land would violate the

¹¹ 2016 SCC OnLine Del 761



provisions of the DLR. The learned Judge held that the restrictions contained in Section 33 would have no application to an agreement to sell. Proceeding further, the learned Judge then held that since the land had admittedly become urbanized, the provisions of the Act itself would have no application. Reiterating the principles enunciated in **Gur Partap Singh**, it was observed as follows: -

“22(i). The issue is that whether there exists a notification issued in the Official Gazette declaring the subject land as falling within Delhi town and New Delhi town? On behalf of the defendants, it is argued that the land which is the subject matter of the Act can be urbanized only if notification is issued under Section 507 of the Delhi Municipal Corporation Act, 1957 and which admittedly has not been issued so far as the said village and suit lands are concerned and hence it is argued that once the land is not urbanized because a notification is not issued under Section 507 of the Delhi Municipal Corporation Act, the land in question continues to be the subject matter of the land falling under Section 3(13) of the Act and hence the land governed by the Act and hence the Agreements to Sell dated 25.9.2006 are hit by the provision of Section 33 of the Act.

22(ii). In response to the argument urged on behalf of the defendants, counsel for the plaintiff has argued that it is not necessary that notification which is talked of in the later part of Section 3(13) of the Act has necessarily to be a notification only under Section 507 of the Delhi Municipal Corporation Act, 1951 inasmuch as even a notification issued by the Central Government under Section 11 of the Delhi Development Act, 1957 declaring an area to be the subject matter of a master plan or a zonal plan of the Delhi Development Authority, has the effect that such a land with respect to which a master plan or a zonal plan or an area plan is prepared (and which will entitle thereafter the DDA to treat such area as development area for being developed as per the master or zonal plan etc) shows that by such notification lands no longer will remain the subject matter of the Act inasmuch as such lands are part of urbanization. Reliance is also placed in this regard upon paras 19 and 24 of the judgment of a learned Single Judge of this Court in the case of *Gur Pratap Singh v. Union of India* 2004 (111) DLT 25, and by which paras, the learned Single Judge has held that once a particular area is a subject matter of the notification under the Delhi Development Act by notifying the master plan or zonal plan then such land becomes urbanized and



hence is out of the scope of application of the Act and Section 3(13) of the Act. These paras 19 and 24 read as under: -

“19. This matter can be looked into from another aspect. The notification amending the Master Plan clearly provides that the land in question can be used for the purpose of a motel. Once this option is available and is exercised by owner of the land, the land is no more being used for agricultural purposes. Thus, once the land is elected to be used by the owner for a motel, permission for which has been granted under the amendment to the Master Plan, it no more remains agricultural land under the meaning of Section 3(13) of the Land Reforms Act. For this reason also, there would be no occasion for obtaining any permission. The Land Reforms Act is an enactment for protecting the agricultural use of the land. Once this land itself ceased to be agricultural, there is, really speaking, no question of application of the Land Reforms Act. Needless to say, this is on account of the fact that there is permissible non-agricultural use of a motel in pursuance to the notification of 1995.

XXXX

XXXX

XXXX

24. Section 53(3) of the DDA Act makes it clear that once a permission for development under this Act has been obtained, the same shall not be deemed to be unlawful by reason of the fact that such permission, approval or sanction is required under any other law for which permission has not been obtained. Thus, in view of the mandate by the DDA and accepted by the MCD, there would be overriding effect of this mandate, even if the Land Reforms Act was to apply.” (Underlining added)

23. I agree with the argument which is urged on behalf of the plaintiff that a notification for urbanization need not only be through a notification under Section 507 of the Delhi Municipal Corporation Act as the later part of Section 3(13) of the Act does not in any way require that there is only one manner of notification viz only under Section 507 of the Delhi Municipal Corporation Act. This later part of Section 3(13) of the Act does not talk of a notification only under Section 507 of the Delhi Municipal Corporation Act. The requirement of this later part of Section 3(13) of the Act is only that a notification is issued in the Official Gazette to make the land as part of the Delhi town and New Delhi town. Once a notification is issued applying a zonal plan issued pursuant to the master plan showing that subject lands are covered under the zonal plan issued by the DDA, in such a situation, it has to be held that the lands cease to



be the lands covered under the Act because of issuance of a notification in the Official Gazette results in the lands becoming part of the Delhi town. Additional reasoning on this aspect can be understood from the object and the language found in Section 1 and Sections 3(5) and 3(15) of the Act and which Sections show that once an area falls within a town area and an area ceases to be an agricultural land because it has to be developed as part of the development of the Delhi town or New Delhi town, then such an area no longer remains an agricultural area for being covered under the expression land as defined in Section 3(13) of the Act. With humility, I am in complete agreement with the observations made by the learned Single Judge of this Court in the case of *Guru Pratap Singh* (supra) and which arrives at the same conclusion that once the land ceases to be agricultural, the land ceases to be the subject matter of the Act.”

38. A similar issue arose in **Sanraj Farms Private Limited Vs. Charan Singh**¹². The suit which formed the subject matter of those proceedings had come to be instituted after the land in question had come to be included in a notification of 18 June 2013. One of the defenses which was raised in the suit proceedings was that the suit would be barred by Section 185 of the DLR. It becomes relevant to note that the notification of 18 June 2013 which had been issued in exercise of powers conferred by Section 11 of the DDA Act, had preceded the institution of the suit itself.

39. On exchange of pleadings, the learned judge framed an issue of whether once the land has come to be included in a notification under Section 11 of the DDA Act, it would cease to be governed by the DLR. Answering that issue in the affirmative, it was held as follows: -

“15. In *Shri Neelpadmaya Consumer Products Pvt. Ltd.* supra, one of the issues for adjudication in the suit was whether the suit land was governed by the provisions of Delhi Land Reforms Act and the agreement between the parties was in violation of the provisions of the said Act. Following

¹² 2019 SCC OnLine Del 10741



the judgments aforesaid, it was held (i) that a notification for urbanization need not only be through a notification under Section 507 of the Delhi Municipal Corporation Act as the later part of Section 3(13) of the Land Reforms Act does not in any way require that there is only one manner of notification viz only under Section 507 of the Delhi Municipal Corporation Act; (ii) Section 3(13) of the Land Reforms Act only requires that a notification is issued in an Official Gazette to make the land as part of the Delhi town and New Delhi town; once a notification is issued applying a zonal plan issued pursuant to the Master Plan showing that subject lands are covered under the zonal plan issued by the DDA, in such a situation it has to be held that the lands cease to be the lands covered under the Land Reforms Act because the issuance of a notification in the Official Gazette results in the lands becoming part of Delhi town; and, (iii) that as per Sections 1, 3(5) and 3(15) of the Delhi Land Reforms Act, once an area falls within a town area and an area ceases to be an agricultural land because it has to be developed as part of the development of the Delhi town or New Delhi town, then such an area no longer remains an agricultural area for being covered under the expression 'land' as defined in Section 3(13) of the Land Reforms Act.

22. However the fact remains that no finding given in this suit, to which the Government of NCT of Delhi is not a party, can be binding on the Government of NCT of Delhi. Thus, though for the purposes of the jurisdiction of this Court the said question is being adjudicated but in my view, it cannot ipso facto follow that owing to the said judgment the proceedings underway before the Revenue Assistant against the plaintiff with respect to the subject land, under Section 81 of the Delhi Land Reforms Act, would come to an end. It would be open to parties to make their contentions in this regard before the Revenue Assistant and in further proceedings if any arising from any order therein.

23. In view of the aforesaid judgments which are binding on me, it has but to be held that on the issuance of notification dated 18 June, 2013, the land subject matter of the suit, insofar as for the purposes of maintainability of the proceedings before the Courts under the Delhi Land Reforms Act, has ceased to be governed by the Delhi Land Reforms Act and Issue No. I is accordingly decided in favour of the plaintiff and against the defendants."

40. The issue of urbanization and its resultant impact on the applicability of the provisions of the DLR also fell for consideration before this Court in



Jeet Singh Vs. Dashrath Yadav¹³. The Court yet again taking into consideration the provisions made in Section 3(13) of the Act and the earlier judgements rendered on that point, held as follows: -

“18. The pleadings in the plaint when read conjointly with the documents filed by the appellant/plaintiff, particularly, the order dated 22.03.2006 passed in W.P.(C)4260-89/2006 make it manifest that no agricultural activity was being undertaken on the subject plot. In similar circumstances, in the case of Anand J. Datwani (supra), where the plaintiff therein had filed a suit for partition, declaration and permanent injunction in respect of farm land situated in village Rangpuri and the defendant had taken a plea that merely because the land had been constructed upon and is being used for residential purposes, it would not cease to fall within the definition of the word, “land” under the provisions of the Delhi Land Reforms Act and that the jurisdiction of the civil court is barred by virtue of Section 185 of the Delhi Land Reforms Act and lastly, that only on a notification being issued under Section 507 of the Delhi Municipal Corporation Act, would the land cease to be treated as agricultural land, it was conclusively held by a learned Single Judge of this court that once the land in question is not being used for any of the purposes contemplated under the Delhi Land Reforms Act, it ceases to be ‘agricultural land’ and is no longer to be governed by the Delhi Land Reforms Act. The said view was expressed in the following words: —

“26. Above discussion makes it amply clear that an agricultural land must be used for the agricultural purposes only if the Land Reforms Laws are to be made applicable and if it is not so used, it will cease to be an agricultural land. In the instant case, admittedly, the land in question has not been used for any purposes contemplated therein under the Land Reforms Act, instead, the land has been built upon. Admittedly, two residential units have been constructed on the land in question out of which one is used by the parties as their residence and the other one was rented out and so far, the land has not been, in fact had never been used for the agricultural purposes. It is not the case of the defendants that they are carrying out any agricultural activity or any other allied permissible activity on the land in question. Therefore, as per the aforesaid reasoning and the view taken consistently by this court in number of judgments, the land in my considered view, has ceased to be an

¹³ 2017 SCC OnLine Del 7718



agricultural land and will no longer be governed by the provisions of the Delhi Land Reforms Act.

Thus, the jurisdiction of civil court cannot be said to be barred by virtue of the provisions of section 185 of the Act.”

(emphasis added)

19. The view expressed in the case of Anand J. Datwani (supra) was founded on observations made in the same context in the case of N.B. Singh (HUF) v. Perfexa Solutions Private Ltd. reported as 159 (2009) DLT 729 and Nilima Gupta v. Yogesh Saroha reported as 2009 (156) DLT 129. In the case of Nilima Gupta (supra), the observations made in the para 5 are apposite and the relevant extract is reproduced herein below: —

“5. “..... **The Delhi Land Reforms Act was not meant to decide the Civil Disputes of unauthorized colonies, which emerged on agricultural land. The hard reality of today is that though large chunks of land stand in the revenue record as “khasra numbers” but in fact the land has been converted into unauthorized/authorized colonies, where people have either built houses or have plots and civil disputes are arising day in and day out in respect of these plots.** Sometimes, plots are sold twice, sometimes there are disputes regarding possession of plots, sometimes there are disputes regarding encroachment, sometimes there are disputes regarding invalid/valid sale of the plots. **The Legislature while framing the Delhi Land Reforms Act had not envisaged these kinds of disputes to be referred to the Revenue Authorities.** A perusal of chart given in Schedule I pertaining to Section 185 itself shows that all disputes which are envisaged by the Delhi Land Reforms Act to be decided by the Revenue Assistant or Deputy Commissioner are those, which pertain to agricultural land and they are not those disputes which arise when agricultural land is converted into unauthorized colonies or authorized colonies. The Courts cannot be divorced from the ground realities and live in an imaginary world of jurisdiction. **Once the agricultural land loses its basic character of ‘agricultural land’ and changes hands several times and gets converted into an authorized/unauthorized colony by dividing it into plots, the disputes of plot holders are not those, which can be decided by Revenue Authorities and these disputes have to be decided by the Civil Courts.”**

21. This Court is of the opinion that in the light of the averments made by the appellant/plaintiff in the plaint and the documents filed on record by the respondent/defendant, by no stretch of imagination can it be urged



that the subject land continues to retain its basic character of agricultural land. Once the land has been converted into an unauthorized colony and plots have been carved out and further, the plot holders like the respondent/defendant herein are using them for residential purpose, it is axiomatic that the subject land loses its character of agricultural land.

In these circumstances, the provisions of Delhi Land Reforms Act cannot be invoked by the respondent/defendant to oust the jurisdiction of civil courts as the land is clearly beyond the purview of the Act.”

41. More recently, an identical question arose for consideration of this Court in **Sushma Kapoor**. This too was a case where proceedings under Section 81 had come to be initiated post the inclusion of the land in question in a Section 11A notification of the DDA Act. The validity of those proceedings were questioned on identical grounds, namely, of the Act having ceased to apply once the land had come to be urbanized. The Court in **Sushma Kapoor** observed as follows: -

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

13. In *Gur Pratap Singh supra*, vide Gazette Notification dated 16 June, 1995 by DDA for amendment of the Master Plan, motels were permitted under Rural Zones/Green Belts and in Commercial Zones and National Highways and Inter-State Roads as defined in the Notification. However, on petitioner therein raising construction of a motel over his land in terms thereof, the SDM started proceedings under Sections 23 and 81 of the Delhi Land Reforms Act, 1954. It was held that (i) land is defined in Section 3(13) of the Delhi Land Reforms Act, 1954 and vide Section 22 thereof land can be used only for the purposes connected with agriculture, horticulture or animal husbandry; once vide amendment of the Master Plan, the land is permitted to be used as a motel, the land is no more agricultural within the meaning of Section 3(13) of the Land Reforms Act; (ii) the Land Reforms Act is an enactment for protecting agricultural use of the land; once the land



itself ceases to be agricultural, there is really speaking no question of application of the Land Reforms Act; (iii) the amendment of the Master Plan was in accordance with the Section 53(2) of the DDA Act, 1957 and which overrides the provisions of any other law; and, (iv) Section 53(3) of the DDA Act makes it clear that once permission for development in respect of any land has been obtained, the same shall not be deemed to be unlawful by reason of the fact that such permission is required under any other law and which permission has not been obtained; the mandate of the DDA would have an overriding effect, even if the Land Reforms Act was to apply.

14. In appeal preferred thereagainst, the Division Bench confirmed the finding of the Single Judge. It was observed that once the Master Plan, which admittedly covered the subject land, gave an option for use of the land falling in Rural Zone or Green Belt as a motel, on the exercise of the said option, the subject land goes out of ambit of Section 23 of the Land Reforms Act, because it would not constitute a change of land use necessitating permission under the said provision.

15. In *Shri Neelpadmaya Consumer Products Pvt. Ltd. supra*, one of the issues for adjudication in the suit was whether the suit land was governed by the provisions of Delhi Land Reforms Act and the agreement between the parties was in violation of the provisions of the said Act. Following the judgments aforesaid, it was held (i) that a notification for urbanization need not only be through a notification under Section 507 of the Delhi Municipal Corporation Act as the later part of Section 3(13) of the Land Reforms Act does not in any way require that there is only one manner of notification viz only under Section 507 of the Delhi Municipal Corporation Act; (ii) Section 3(13) of the Land Reforms Act only requires that a notification is issued in an Official Gazette to make the land as part of the Delhi town and New Delhi town; once a notification is issued applying a zonal plan issued pursuant to the Master Plan showing that subject lands are covered under the zonal plan issued by the DDA, in such a situation it has to be held that the lands cease to be the lands covered under the Land Reforms Act because the issuance of a notification in the Official Gazette results in the lands becoming part of Delhi town; and, (iii) that as per Sections 1, 3(5) and 3(15) of the Delhi Land Reforms Act, once an area falls within a town area and an area ceases to be an agricultural land because it has to be developed as part of the development of the Delhi town or New Delhi town, then such an area no longer remains an agricultural area for being covered under the expression 'land' as defined in Section 3(13) of the Land Reforms Act.



23. In view of the aforesaid judgments which are binding on me, it has but to be held that on the issuance of notification dated 18th June, 2013, the land subject matter of the suit, insofar as for the purposes of maintainability of the proceedings before the Courts under the Delhi Land Reforms Act, has ceased to be governed by the Delhi Land Reforms Act and Issue No. I is accordingly decided in favour of the plaintiff and against the defendants.

7. The Court further takes note of the consistent line taken in the body of precedents on this subject starting from the decision of the Division Bench in *Smt. Indu Khorana v. Gaon Sabha* and the subsequent decisions which were noticed in *Sanraj Farms* which have explained the concept of “land” as liable to be understood and interpreted under the provisions of the Act. The ratio of those decisions with respect to the applicability of the Act must be recognized to be that land in order to be made subject to proceeding under the Act must answer to the description as set forth in the Section 3(13) of the Act. As would be manifest from a reading of Section 3(13) of the Act, it is only land held or occupied for purposes connected with agriculture, pisciculture, horticulture, animal husbandry or poultry farming which could be subjected to proceedings under the Act. The decisions noted above have proceeded further to hold that once land has become urbanized and thus found to have been put to a use or purpose other than those mentioned above, it would clearly fall outside the purview and ambit of the Act. The judgments of the Court in unequivocal terms hold that once the property ceases to answer to the description of land as defined under the Act, proceedings can neither be initiated and if commenced must abate.

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

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

9. Once the fact of the land being covered under the notification of 18 June 2013 and covered under a Low Density Residential Area is admitted to the respondents, it is manifest that the proceedings initiated under the



Act cannot be sustained. The Court also fails to find any merit in the contention of Ms. Takiar that the revenue authorities would still be empowered to enquire whether constructions were being raised without the requisite permissions as contemplated under the DMC or DDA Acts. Those enactments incorporate sufficient measures for enquiry and enforcement and independently confer powers in connection therewith upon statutory authorities other than revenue officials.

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

42. As would be evident from the aforesaid discussion, the decisions aforementioned dealt with cases where proceedings had either been initiated subsequent to the land having become urbanized or in suits where the question of the bar created by Section 185 of the DLR was raised.

43. In **Utsav Exim Ltd.** however, the Court was faced with a situation where proceedings initiated under Section 81 had reached the stage of a final order of ejectment and vesting having been made in favor of the Gaon Sabha. That order was sought to be assailed in appeal on the ground that the land had subsequently come to be included in a notification issued under Section 507 of the DMC Act. The stand of the State stands duly recorded in paragraph 4 of the report which reads as follows: -

“4. Mr. Shadan Farasat, learned ASC appearing for the respondent, on the other hand, contends that notwithstanding the issuance of a notification under Section 507 of the D M C Act, 1957 in 2017, regard must be had to the fact that the petitioner had been found to have used the land in question for non-agricultural purposes since 2008. According to Mr. Farasat, it is this event alone which would constitute a cause of action for drawl of proceedings under Section 81 of the DLR Act, and once it has been found that the provision of the DLR Act had been violated at this



stage itself, the subsequent notification issued under Section 507 cannot be viewed as extending relief to the petitioner in so far as the vesting of the land with the Gaon Sabha is concerned. It would be equally important to note the contention of Mr. Farasat, learned counsel, who submits that the appeal was merely a continuation of the proceedings which had been initiated in 2008 and thus a subsequent notification issued under Section 507 of the DMC Act would not impact the proceedings drawn or the orders passed against the petitioner. ”

44. The Court ultimately proceeded to observe thus: -

“5. Having heard learned counsel for parties, this Court notes that insofar as the impact of a notification under Section 507 of the DMC Act is concerned, the same has been consistently explained with this Court holding that once a particular area has come to be recognized as being urbanized, proceedings under the DLR Act can neither be initiated nor can they be possibly continued. Noticing the various decisions which were rendered on this issue, this Court in a recent decision in *Smt. Sushma Kapoor v. Government of NCT of Delhi*, held thus:-

“7. The Court further takes note of the consistent line taken in the body of precedents on this subject starting from the decision of the Division Bench in *Smt. Indu Khorana v. Gaon Sabha* (W.P.(C) 4143/2003 decided on 26 March 2010) and the subsequent decisions which were noticed in **Sanraj Farms** which have explained the concept of “land” as liable to be understood and interpreted under the provisions of the Act. The ratio of those decisions with respect to the applicability of the Act must be recognized to be that land in order to be made subject to proceeding under the Act must answer to the description as set forth in the Section 3(13) of the Act. As would be manifest from a reading of Section 3(13) of the Act, it is only land held or occupied for purposes connected with agriculture, pisciculture, horticulture, animal husbandry or poultry farming which could be subjected to proceedings under the Act. The decisions noted above have proceeded further to hold that once land has become urbanized and thus found to have been put to a use or purpose other than those mentioned above, it would clearly fall outside the purview and ambit of the Act. The judgments of the Court in unequivocal terms hold that once the property ceases to answer to the description of land as defined under the Act, proceedings can neither be initiated and if commenced must abate.”



6. Notwithstanding the above, the Court also cannot lose sight of the fact that in the present case a conditional order of eviction had been made on 27 June 2008 and it was that order which was confirmed on 08 November 2016. The important question which would therefore arise for consideration would be whether an order of vesting which has attained finality prior to the issuance of the notification under Section 507 of the DMC Act can be said to have been nullified or for that matter reversed.

7. These and other issues which clearly arise in the facts of the present case do not appear to have been accorded any consideration by the District Magistrate. In view of the aforesaid, the Court is of the considered view that the matter would warrant being remanded to the appellate authority for considering the appeal of the petitioner afresh.

8. Accordingly, the writ petition is allowed. The impugned order of 09 March 2020 is quashed and set aside. The matter in consequence shall stand remitted to the Collector (South-West) who will consider the appeal of the petitioner afresh bearing in mind the observations made hereinabove. All contentions of respective parties in respect of the issues which arise and have been noticed above are kept open.”

45. As is evident from the aforesaid abstract of the decision in **Utsav Exim Ltd**, the issue of whether a final order made under Section 81 would be liable to be set at naught consequent to a subsequent promulgation of a notification under Section 507 of the DMC Act was not authoritatively ruled upon and the matter was remanded for the consideration of the appellate authority. However, by the time this particular batch of writ petitions was taken up for hearing, the Court was also faced with the rival sides relying upon two circulars namely of 03 July 2013 and 04 February 2020 which had come into play. Since those circulars were relied upon with the respondents vehemently urging that they clearly concluded the issue on the one side and the petitioners on the other asserting that they cannot be held to be determinative of the legal questions that arise, the Court recognised the existence of an imperative need to lend clarity on their scope



and impact and to rule on the questions itself in order to lend a hiatus to the controversy.

46. The circular of 03 July 2013 reads as follows: -

“Circular

WHEREAS the issue of applicability of Section 81 of the Delhi Land Reforms Act, 1954 with respect to certain kinds of lands was considered by the Cabinet of Govt. of NCT of Delhi on 15.06.2013.

WHEREAS, vide cabinet decision No. 2032 dated 15.06.2013, the Cabinet has considered and approved the proposal as contained in para 14 of the Cabinet Note. Said para 14 is reproduced here in below:

“14. In view of the submissions made above and taking in to consideration the observations made by Hon' Courts in various judgment as cited above the Cabinet may consider the following proposal:

1) The provisions of the DLR Act. 1954 shall not apply to:

- i. An area which is urbanized by way of notification under Section 507 of the DMC Act, 1957 and
- ii. Areas falling within the boundaries of unauthorized regularized colonies;
- iii. Buildings in respect of which building plans have been sanctioned by Competent Authority or permission granted under amendment of Master Plan.
- iv. House sites allotted under 20 Point Programme or in Extended Abadi as defined under DLR Act.
- v. Improvement as per provisions of section 3 (12) of DLR 1954.

2) The main focus of enforcement of DLR Act provisions shall be to prevent my unauthorized colonization of agriculture land. All Dy. Commissioners, Revenue Assistants, Revenue Officers/officials shall take stringent action as per the provisions of DLR Act to check the menace of colonization in a time bound manner and failure to do so on the part of any revenue officials will be treated seriously.”

NOW THEREFORE, all Deputy Commissioners, Revenue Assistants and other Revenue Staff are required to take note of the aforesaid Cabinet Decision and act accordingly.”

W.P.(C) 5627/2020 and connected matters

Page 43 of 81



47. The circular of 04 February 2020 is extracted hereinbelow: -

“Circular

The rural areas of NCT of Delhi are declared urbanized when a notification under Section 507 of the Delhi Municipal Corporation Act 1957(66 of 1957) is issued. Once the rural areas of changes are declared urbanized, the provisions of the Delhi Land Reforms Act, 1954 do not apply to such areas.

Accordingly, attention of all concerned is drawn that once the notification under 507 has been issued, the restrictions under Section 33 of Delhi Reforms Act, 1954 would not be applicable in such areas for the purpose of obtaining Status Report/NOC. However, in respect of cases where the lands have been allotted under Section 74 of Delhi Reforms Act, 1954, it has to be ensured that no sale/transactions, in violation of terms and conditions of allotment and of applicable legal provisions, is allowed. In respect of lands where proceedings/cases under Section 81 of the Act, have been initiated before the issuance of Notification under Section 507 of MCD Act, 1957 and are still pending for adjudication before the Revenue/Appellate Authorities, such proceedings would continue unless withdrawn by competent authority and hence, the land Status Report/NOC would be required to check this aspect as per existing instructions.

Further, previous permission of competent authority is also required under Section 8 of Delhi Land (Restrictions on Transfer) Act 1972 with the objective to check that the land which has been notified or declared for acquisition or has been acquired by the Government is not transferred by sale, mortgage, gift or lease or otherwise, without such permission. It is therefore, reiterated that obtaining the Status Report/NOC regarding land acquisition status from ADM/LAC by the concerned Sub-Registrars shall also continue before registration of any document of transfer of sale, mortgage, gift or lease or otherwise of land so as to ensure that no person transfers or purports to transfer any land which has been acquired or in respect of which acquisition proceedings have been initiated.

It shall be personal responsibility of the Sub-Registrar to ensure compliance of all applicable Instructions/legal provisions before registration of a document.

This issues with the approval of Pr. Secretary (Revenue)-cum-Divisional Commissioner.”



48. Having noticed the relevant provisions of the DLR and the Rules framed thereunder as well as the circulars relied upon by the respondents, it would be appropriate to briefly dwell upon the provisions made under the DMC and DDA Acts.

THE DMC ACT

49. Prior to the enactment of the DMC Act, municipal services and functions in Delhi were being performed by a multitude of bodies and local authorities. It was accordingly thought appropriate to constitute a pivotal entity which may discharge the duties and functions of those bodies. The DMC Act also consolidates the various laws and regulations governing municipal governance in Delhi. The said Act while defining “rural areas” specifically excludes areas falling within the domain of the District Board of Delhi which may come to be subsequently included in a notification issued under Section 507 thereof. All areas of Delhi which do not fall within rural areas are defined to mean “urban areas”. Apart from the general obligations and functions which the Corporations constituted under the DMC Act are to discharge, Chapter XVI empowers them to exercise a power of general supervision over all building activity which may be undertaken in areas falling within their respective jurisdictions. Section 507 empowers a Corporation to declare that any part of a rural area shall cease to be included therein and consequently form part of an urban area. The consequence of the aforesaid declaration is that the said area then becomes subject to the control and superintendence of the particular Corporation and the provisions of the DMC Act. The impact of the issuance of a notification



under Section 507 is also spelt out in Section 150 (3) of the DLR which enjoins that upon the promulgation of such a notification, the Gaon Sabha would stand dissolved and all properties which stand vested in that authority would vest in the Union Government. All interests, obligations, liabilities of the Gaon Sabha flowing from contracts stand taken over and assumed by the Union.

THE DDA ACT

50. The DDA Act came to be enforced in order to ensure planned development in the NCT. The Authority came to be constituted to implement the provisions of this enactment. As is evident from a reading of Section 6, the foundational purpose for the constitution of the Authority is to promote and secure the development of Delhi according to plan. The Authority in terms of Sections 7 and 8 is enjoined to prepare a Master Plan and Zonal Development Plans in furtherance of the aforesaid objective. In terms of Section 12(1) of the DDA Act, the Union Government may by notification declare any area of Delhi to be a development area for the purposes of the enactment. Once an area falls within the limits of a development area, no development in or over land can be undertaken except in accordance with the permission of the Authority as per the provisions contained in Section 12(2). Section 22 enables the Union Government to place at the disposal of the Authority any nazul land for the purposes of development. Once the nazul land comes to be made over to the Authority, no development is permitted to be undertaken except by or under the supervision of the Authority in view of the mandate of Section 12(2). The



DDA Act in essence confers the power on the Authority to control, oversee and sanction all building activities and operations that may be proposed in the development area. Building activities and operations are thereafter governed by and subject to the provisions made in the Master and Zonal Development Plans. Section 53(2) provides that the provisions of the DDA Act would apply notwithstanding anything inconsistent therewith contained in any other law. The overriding effect as accorded to its provisions by virtue of Section 53(2), is hedged only to the extent envisaged in Sections 30(4) and 31(8). Section 54 which is described to be the Savings clause and insofar as it is relevant for our purposes, excludes the operation of the statute from applying to erection of buildings other than a dwelling house to the extent that it may be required for purposes subservient to agriculture, excavations made in the ordinary course of agricultural operations and the construction of unmettaled roads where required to grant access to land reserved for agricultural purposes.

THE INTENT AND SCOPE OF SECTIONS 81/82

51. The ambit of Sections 81 and 82 fell for consideration before this Court in **Sant Baba Gurmail Singh and another VS. Lt. Governor of Delhi**¹⁴. The scheme of that provision was explained thus: -

53. 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

¹⁴ 2022 SCC OnLine Del 28



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 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.

54. 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 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.

55. 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.”

52. Regard must be had to the fact that Section 81 is primarily concerned with ensuring that land falling within the ambit of the statute, is not used for purposes other than those sanctioned under the enactment. The objective underlying the aforesaid provision clearly appears to be to ensure that land as defined under Section 3(13) is not misutilised or diverted to uses other than those permitted under the Act. It becomes relevant to bear in mind the fact that in terms of the provisions of Sections 81 and 82, the decree of eviction remains statutorily suspended for a period of 3 months to enable the occupant to take remedial measures and restore the land to its agricultural character. It is only where the occupant fails to abide by the decree, that proceedings for eviction are to be initiated. The vesting of the land in the Gaon Sabha consequent to a failure on the part of the occupant to restore the land to its original rural state, proceeds simultaneously with eviction. Vesting as contemplated in Sections 81 and 82 clearly establishes the legislative intent to divest the occupant of all rights claimed in the land and transfer absolute title and interest in the Gaon Sabha. It essentially contemplates the annihilation of the preexisting rights of the owner or occupier. Viewed in the backdrop of Sections 81 and 82, this Court is of the firm opinion that vesting here is not contemplated as operating in the



restricted sense of taking over possession but also of the effacement of all rights that may have existed in favour of the owner or occupier thereof. Consequent to a failure on the part of the owner or occupier to comply with the conditional decree, the land must be recognized as coming to the possession and ownership of the Gaon Sabha absolutely and free of all encumbrances. That then takes the Court to deal with the impact of the notifications under the DMC/DDA Acts in the four possible scenarios categorized hereinbefore.

CASE 1

53. Insofar as CASE 1 is concerned, this need not detain the Court since it was fairly conceded by the respondents that where no proceedings have been drawn or initiated under Section 81 prior to the issuance of the notifications, no authority or jurisdiction would be retained to invoke the same. This position clearly flows from the decisions of the Court that have been noticed above and which have consistently taken the view that once the land stands comprised in notifications issued under the DMC or the DDA Acts, it would stand excluded from the application of the DLR. This since it has ceased to answer to the description of land itself as defined in Section 3(13) of the Act. The Court thus comes to the firm conclusion that once the area has come to be urbanized and stands comprised in notifications issued under the DMC or the DDA Acts, the respondents would stand denuded of all jurisdiction and authority to initiate proceedings under Section 81 of the Act thereafter.



CASE 2

54. Turning then to CASE 2, it must be held that once notifications come to be issued under the DMC or the DDA Acts, they manifest an unequivocal recognition of the fact of the land becoming urbanized and no longer falling within the sweep of Section 3(13). The Court also bears in mind the indubitable fact that Section 81 is primarily concerned with ensuring that rural land is not diverted to uses other than those specified in Section 3(13). If that be the primary and solitary objective of Section 81, as this Court duly recognises it to be, it would be wholly illogical and incongruous to require the owner or the occupier to restore the land to its agricultural state even though the surrounding area may have become totally urbanised. In fact, once the land ceasing to be of a rural character comes to be duly recognized, no purpose would be served in enforcing its restoration for agricultural purposes. In view of the above, this Court is of the considered view that the proceedings where they have merely reached the stage of initiation or a conditional order having been passed, must abate and be liable to be dropped or closed. There would remain no legitimate or useful purpose to continue those proceedings once the aforesaid factual position comes to hold the field. The view taken by the Court in this respect stands fortified from the observations as made in **Gur Pratap Singh** extracted hereinbefore.

More importantly and has been consistently held by this Court in the decisions aforenoted, once the land falls outside the ambit of Section 3(13), the Act can no longer be held to apply. Once the operation of the Act over the land has drawn to a close, there can be no justification to hold that the *W.P.(C) 5627/2020 and connected matters*



proceedings under Section 81 which remain at an inchoate stage and a final order of vesting yet to be passed, be continued and the occupier be compelled to restore the land to its agricultural state.

55. The submission of the respondents that proceedings must be held liable to be continued in law since the action had commenced based on an infraction which occurred prior to the issuance of the notifications under the DMC or the DDA Acts also does not commend acceptance for the following reasons. As this Court dwells upon the scheme of Sections 81 and 82 of the DLR, it is manifest that they are not intended on a fundamental plane to be confiscatory in character. The primary legislative purpose and objective appears to be the conservation and protection of agricultural belts of land. The provisions essentially seek to protect agricultural land from being diverted to uses other than those sanctioned and contemplated under the Act. Additionally, the action of eviction and vesting is not intended to immediately follow upon it being found that the land was being used for purposes other than those specified in Section 3(13). The occupier in terms of those provisions is granted an opportunity to restore the land to its original character and it is only consequent to a failure to do so that eviction and vesting ensues. When viewed in light of the scheme and objectives of those provisions as explained above, it is evident that the mere fact that the contravention which led to the drawl of proceedings occurred prior to the issuance of the notifications under the DMC or DDA Acts would have no material bearing.



56. The submission that holding those proceedings as liable to be closed would amount to recognizing the notifications issued under the DMC or the DDA Act operating retroactively, also does not merit acceptance. Basically, the question is not one of retrospective operation of the notifications as was canvassed on behalf of the respondents but whether the very purpose of the proceedings contemplated under Sections 81 and 82 surviving. Proceedings under Sections 81 and 82 would draw sustenance and breath from a continuing statutory obligation to safeguard rural land. But once the land itself stands freed from the statutory control of the DLR by virtue of it ceasing to fall in the genres contemplated under Section 3(13), merely because proceedings had been initiated or commenced prior to the promulgation of the notifications, would not constitute a valid legal ground to hold that those proceedings would survive. Be it the action of eviction or levy of damages, they are both concerned with the underlying and fundamental objective and intent to protect and preserve agricultural land. There would remain no justification to continue proceedings which are solely aimed at subserving that objective once land has ceased to be agricultural.

57. While the Court is conscious of the fact that **Indu Khorana, M/S Neelpadmaya, Sanraj Farms and Sushma Kapoor** dealt with situations where proceedings under the DLR came to be initiated after the issuance of the notifications under the DMC and DDA Acts, that would not in the considered view of the Court detract from the soundness of the basic conclusions reached and the principles enunciated therein. The ratio decidendi of those decisions clearly appears to be to ring down the curtains *W.P.(C) 5627/2020 and connected matters*



on proceedings commenced under the DLR once it is found that the land stands taken out from the coverage and ambit thereof.

58. Before proceeding ahead, it would be apposite to clarify here itself that when the Court in **Sushma Kapoor** chose to use the expression “abate”, it was in the context of the facts of that case where too proceedings under Section 81 had come to be initiated after the land had come to be included in a notification issued under the DDA Act. The observations in **Sushma Kapoor** are thus liable to be understood in that light. Regard must also be had to the fact that in **Utsav Exim** the Court was for the first time faced with a situation where the notification under Section 507 had come to be issued after the passing of a final order directing the vesting of the land in the Gaon Sabha.

59. The issue of whether a final order of vesting would in any manner stand impacted by a subsequent notification issued under Section 507 of the DMC Act was thus left open in **Utsav Exim**. The Court shall attempt to answer that issue in these proceedings while dealing with CASE 3. In any case and for reasons elaborately set out hereinabove, proceedings which are yet to culminate in the passing of a final order, must yield and concede to the topographical transformation of the area which has resulted in it losing its agricultural milieu. Upholding the contention urged by the respondents would lead to an anomalous situation of an occupier being compelled by a continued application of the DLR to preserve the agricultural character of the land even when its provisions have ceased to apply and that too at a



point where the rights of parties are yet to have been finally and conclusively determined.

60. The argument addressed on behalf of the respondents based on Section 150(3)(d) must also fail bearing in mind the fact that the issuance of a notification under the DMC Act results in the dissolution of the Gaon Sabha itself by operation of law. While clause (d) does contemplate proceedings being continued or initiated by the Union upon the occurrence of that event, that cannot possibly have any application to amorphous or embryonic proceedings under Sections 81 and 82 of the DLR for reasons recorded hereinafter.

61. Firstly, the question of initiation of proceedings would not arise at all once notifications under the DMC or the DDA Acts come to be issued. This position was duly conceded by the respondents themselves. This since and as was observed earlier, the very purpose underlying those provisions, namely, of safeguarding or restoring the land to its rural character would have ceased to exist. Secondly, and as was noted above, CASE 2 is dealing with a situation where proceedings drawn under Sections 81 and 82 are yet to attain finality and orders of eviction and vesting yet to be made. This is thus a stage where the rights and liabilities of parties are still to have been finally determined or frozen. The proceedings are yet to crystallise into a binding adjudication. CASE 2 deals with a situation where the proceedings are at a preliminary and nascent stage. Once the DLR has ceased to apply at this stage of the proceedings itself, there exists no justification in law to hold that those proceedings are liable to be taken to its conclusion. Lastly, it



may be noted that Section 150(3)(d) of the Act uses the expression “*may be continued....*”. Viewed in light of the scheme and intent of Sections 81 and 82, this Court is of the considered opinion that the said provision also would not warrant the continuation of those proceedings.

62. The Court draws sustenance in this regard from the judgment of this Court in **Ishwar Singh**. Ishwar Singh arose from suit proceedings instituted before the Civil Court with the plaintiff seeking possession. One of the objections which was raised by the defendant there was that the suit could not be tried by the Civil Court by virtue of the provisions of Section 185 of the DLR. The plaintiff contended that since the land fell within a notification issued under Section 507 of the DMC Act, the bar would not stand attracted. The appellant before this Court however contended that the Civil Court would lack jurisdiction bearing in mind the provisions of Section 150 of the Act. The learned Judge in **Ishwar Singh** categorically held that Section 150(3) would not sanction the continuance of proceedings and that the said provision did not “*impinge*” or effect the application and operation of a notification under Section 507 of the DMC

63. While concluding, the Court deems it necessary to reiterate the caveat and word of caution placed in the introductory parts of the present judgment insofar as it dwells upon the scope of Section 150(3) of the DLR being liable to be understood and appreciated in the backdrop and scope of Sections 81 and 82 only. The observations entered above, are thus liable to be understood in the aforesaid context only. Of course, what would be the impact of the issuance of notifications issued under the DMC or the DDA



Acts once an order of eviction and consequential vesting comes to be made prior in point of time is left over to be dealt with under CASE 3. Similarly, the impact of those notifications on pending proceedings in appeal or revision shall be dealt with while ruling on CASE 4.

CASE 3

64. Dealing with situations which would fall in the category of CASE 3 it becomes important to note that the actions of ejection and vesting as contemplated under Sections 81 and 82 are the culmination of proceedings instituted thereunder. They are essentially the final steps contemplated under the Act to bring those proceedings to a close and represent the final steps of the enforcement process envisaged therein.

65. As held hereinabove, the order of vesting made under Sections 81 and 82 of the DLR 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 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. The order of vesting is granted finality under the DLR subject only to being successfully assailed in an appeal or revision. Subject to the aforesaid solitary caveat, the vesting of the land in the Gaon Sabha would not, in the considered opinion of this Court, be impacted by the subsequent inclusion of the land in a notification issued under the DMC or the DDA Acts. Regard must be had to the fact that the notifications that come to be issued under the aforesaid enactments are not



intended to have retroactive application. Those notifications cannot ipso facto be held to have the effect of obliterating the passage of title in the land to the Gaon Sabha which has come about prior in point of time. The Court fails to discern any intendment, explicit or implied, in the DMC or the DDA Acts which may convince it to hold otherwise. The Court bears in mind that the issuance of a notification under Section 507 of the DMC Act results in the dissolution of the Gaon Sabha and the mantle of control and administration of land passing onto the authorities under that statute. Similarly, the issuance of notifications under the DDA Act divests the Gaon Sabha of control over the land. The issuance of those notifications constitutes and results in a transformative shift with respect to the administration and control of land forming part thereof. The land forming part of those notifications then becomes subject to a completely different and distinct statutory regime. The application of the DMC and DDA Acts to the area results in the creation of new obligations and liabilities. The various consequences which necessarily flow upon the issuance of those notifications clearly convinces this Court to hold that they cannot be recognized as impacting orders of vesting which have come to be made prior thereto. It must therefore be held that orders of vesting which come to be passed prior to the promulgation of notifications under the DMC and the DDA Acts would remain intact and cannot be recognized as being set at naught by virtue of those subsequent events only.

VESTING AND EVICTION UNDER SECTION 81

66. Before closing the discussion on CASE 3 and the various issues which arise in connection therewith it is important to note that once final *W.P.(C) 5627/2020 and connected matters*

Page 58 of 81



orders come to be passed under Sections 81 and 82, the rights and interests in the land consequentially stand ceded and delivered to the Gaon Sabha without any further act or deed being required in law. What the Court seeks to emphasize here is that the passage of title and interests occurs by force of law. The Gaon Sabha when vested with those rights in terms of the provisions of Sections 81 and 82 is not enjoined in law to take any further steps for establishment of its rights and title over the land. The conferment of title is complete the moment a final order comes to be made and vesting is ordered in terms thereof. The act of vesting is neither postponed, stalled nor dependent upon eviction. Regard must be had to the fact that there may necessarily and understandably be a time lag between the passing of a final order and the ultimate ejection of the occupier. However, that by itself would not defer or place in abeyance the legal consequences of vesting which fall into place and come into effect the moment the final order is made.

67. In view of the aforesaid conclusions, this Court holds that orders of vesting which have come to be made on the culmination of proceedings initiated under Sections 81 and 82 of the DLR, would not ipso facto fall or stand set at naught merely on account of subsequent notifications issued under the DMC or the DDA Acts. 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. Once the occupier comes to be divested of title by operation of law, those orders would remain intact and untouched by subsequent notifications. This would of course not detract from the



occupier assailing those orders on grounds which may otherwise be available in law.

CASE 4

68. Under this heading the Court deals with the impact of notifications issued under the DMC or the DDA Acts on pending appeals or revisions. The right to prefer an appeal is governed by Section 185 of the Act. That provision reads thus: -

“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 (5 of 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 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.”

69. It becomes important to note that Section 185(2) is couched in negative terms and stipulates that no appeal shall lie from **“an order”** passed in proceedings mentioned in Column 3 of the Schedule appended to the Act. Contrary to the above, Section 185(3) and (4) lay emphasis on the words **“final order”** passed by a court or on an appeal respectively. The Legislature appears to have consciously made a distinction between “an order” and a “final order”. The intent clearly appears to be that an appeal or a second appeal or revision under the DLR would be maintainable only against a final order as distinct from one which is interlocutory. Insofar as it

W.P.(C) 5627/2020 and connected matters *Page 60 of 81*



is relevant for our purposes, it may thus be clarified that the appeals envisaged under sub sections (3) and (4) of Section 185 would only be maintainable against a final order passed under Sections 81 and 82 of the DLR. In terms of the provisions made in Clause 17 of Schedule I, proceedings under Section 81 in the first instance are to be considered by the Revenue Assistant. An appeal against an order passed by the Revenue Assistant lies to the Deputy Commissioner and a second appeal thereafter to the Chief Commissioner.

70. Undisputedly, the right to prefer an appeal can be exercised by both the landholder as well as the Gaon Sabha where aggrieved by a decision rendered by the Revenue Assistant. The seminal question which then arises for determination is the impact that a notification under the DMC or the DDA Acts may have upon appeals that may be instituted or be pending on the relevant date. The Court in the previous parts of this decision has held, for reasons elaborately spelt out, that proceedings shall draw to a close in cases where a final order is yet to be passed. An order of restraint or a notice requiring an occupier to restore the land to its original state is in the nature of an interim direction passed before the authority takes the precipitate step of directing eviction and vesting of the land in the Gaon Sabha. As noted hereinabove, no appeal is envisaged against an interlocutory order in terms of the language employed in sub sections (3) and (4) of Section 185. We are thus concerned solely with appeals assailing final orders passed under the twin provisions which form the subject matter of this batch.



71. An order of vesting or eviction made would undoubtedly entail serious civil consequences insofar as the owner or occupier of the land is concerned. It would also impact the landholders' constitutional right to hold, exercise and enjoy rights in property as per law established. Viewed in that light, this Court is of the opinion that it would be wholly incorrect to hold that the right of a landholder to institute or pursue an appeal which be pending on the date of issuance of the notifications would stand foreclosed or be lost. The mere fact that a notification has come to be issued between the passing of a final order and the institution of the appeal cannot be recognized in law as detracting from the right of the landholder to establish that he has been wrongfully deprived of property. Similarly, an appeal which is pending on the board of the competent authority on the date of issuance of a notification cannot be said to abate. Abatement extinguishes the right to sue and has the effect of terminating pending legal proceedings without an adjudication of merits. Bearing in mind the serious consequences that would flow if such a state be presumed to come into effect, it would be wholly incorrect and inequitable to hold that the right to institute or pursue a pending appeal at the behest of the landholder would be lost merely because a notification under the DMC or the DDA Acts had come to be issued in the interregnum.

72. More fundamentally, it may be noted that neither the DMC nor the DDA Act postulate such a consequence. In fact, and to the very contrary is the intendment infusing Section 150(3)(d) which preserves the right to institute and continue proceedings pending on the date of issuance of a notification under Section 507 of the DMC Act. It would be important to

W.P.(C) 5627/2020 and connected matters *Page 62 of 81*



note that abatement in any case is not a consequence which can or should be presumed unless the statute so sanction and require. Abatement cannot be assumed based merely only on a surmise bearing in mind the consequences which would then ensue in law.

73. Having so found in favour of the landholders, the Court finds no justification to not recognise a similar right inhering in the Gaon Sabha notwithstanding the issuance of notifications under the DMC or the DDA Acts. It would be hazardous to either conceive or predict the manifold situations and facts which may constrain the Gaon Sabha either instituting or pursuing an appeal. There may be innumerable situations where a Gaon Sabha may be compelled to appeal against an order passed by an authority if it suffer from a patent or manifest illegality. There may also be situations where an order may have caused serious prejudice to the interests of the Gaon Sabha.

74. As is evident from the facts of W.P. (C) 7952/2020 and W.P. (C) 7198/2021, the Revenue Assistant has essentially exercised powers of review and reopened orders of vesting which had attained finality decades before. The appellants raise serious questions with respect to the jurisdiction and the competence of the Revenue Assistant to exercise a power of review. The issue of whether an order of vesting passed in 2002 could have been reviewed or revisited solely on the basis of a notification under Section 507 of the DMC Act which came to be issued seventeen years thereafter in 2019, would merit serious consideration. The respondents also contend that the Revenue Assistant has committed a



manifest illegality in proceeding as if vesting was linked or dependent upon eviction of the occupier of the land. They would submit that a failure to evict or of the occupier continuing to retain possession, albeit unauthorizedly, cannot be recognized as effacing the vesting of the land in the Gaon Sabha which had become a fait accompli.

75. Learned counsels also question the imputation of the principles of limitation to an action for eviction and contend that the DLR nowhere specifies a period of limitation for initiating or accomplishing ejectment upon the expiry of which the proceedings are liable to be dropped. The respondents would be clearly justified in questioning the procedure so adopted by the Revenue Assistant in this respect. The facts noticed hereinabove are merely illustrative of similar issues of importance which may arise and may justifiably constrain the Gaon Sabha or on its dissolution the Union to either institute or prosecute a pending appeal notwithstanding a notification under the DMC or DDA Acts coming to be issued in the intervening period.

76. Reverting then to the principal question posited, it is observed that it would be wholly incongruous to construe Section 185 as being preserved insofar as an occupier of the land may be concerned and deny that right to the Gaon Sabha. There exists no justification to place the Gaon Sabha in a position inferior to that of the owner or the occupier of the land. It becomes vitally important to reiterate that the provisions of the DMC or the DDA Acts do not decree or envisage an abatement of pending proceedings or the extinguishment of a right to appeal. In the absence of the statute providing



for such a ramification, it would be wholly fallacious to hold otherwise. This more so when Section 150(3)(d) of the Act clearly indicates to the contrary insofar as suits, proceedings and prosecutions “*instituted or which might have been instituted*” are concerned. It is thus evident that clause (d) brings within its sweep not just the right to institute an appeal but also to continue those which may be pending in accordance with that clause.

77. The Court thus comes to the conclusion that the right to institute an appeal which stands statutorily conferred or to continue one which remains pending cannot be recognized to be either lost or extinguished merely upon the issuance of notifications under the DMC or the DDA Acts. More fundamentally it would be wholly incorrect to hold that the right to institute or continue appeals stands destroyed once notifications under the DMC or the DDA Acts come to be issued. While with the advent of those notifications, the land ceases to be governed by the provisions of the DLR in “*stricto sensu*”, it does not have the effect of repealing the provisions of the Act as understood in law. The basic consequence that flows from the issuance of those notifications is that the administration and control of that land comes to be governed and regulated by a different statute. If one were to hold otherwise, it would lead to a situation where the owner or occupier would be left bereft of the right to assail an order of eviction or vesting. Similarly, the Gaon Sabha would stand denuded of the right to challenge orders that may suffer from patent illegalities and that may have been passed by authorities while the DLR still applied. For the aforesaid reasons, the Court answers Case 4 holding that the right to institute or continue pending appeals against final orders passed under Section 81 would not *W.P.(C) 5627/2020 and connected matters*



stand extinguished merely because the land has in the meanwhile fallen under the control of the DMC or the DDA to be then regulated by the provisions of the respective statutes under which those authorities stand constituted.

THE REVENUE ASSISTANT AND MERIT REVIEW

78. Regard must be had to the fact that admittedly the Revenue Assistant does not stand conferred with the authority statutorily to exercise a power of review. A “merit review” of an order, made in exercise of judicial or quasi-judicial powers, can be undertaken only if the statute specifically confers such a power or authority. A statutory authority, as is well settled, has no inherent power to undertake a merit review of a decision validly rendered in proceedings. A reading of the Act and the Rules reveal that no such power stands conferred upon the Revenue Assistant. Quite apart from the above, the Revenue Assistant in these cases has chosen to invoke Section 151 of the Civil Procedure Code to reopen and review orders of vesting. In fact, Paragraph 32 contained in Appendix VI to the Rules reveals that the power to review stands invested in the Chief Commissioner alone and that too in respect of its own orders. Paragraph 32 reads thus: -

“32. Power of Chief Commissioner to review and alter his Orders and decrees: -

(1) The Chief Commissioner may review, and may rescind, alter or confirm any order made by himself in the course of business connected with settlement, or otherwise.

(2) No decree or order passed judicially by him shall be so reviewed except on the application of a party to the case made within a period of 90 days from the passing of the decree or order, or made after such period if the applicant satisfies the Chief Commissioner that he had sufficient cause for not making the application within such period.”



EVICTIION AND LIMITATION

79. Additionally, it may be noted that the DLR does not prescribe a period of limitation for effecting ejectment of an occupier or owner of land. Regard must be had to the fact that the Schedule to the Act specifies the period within which proceedings may be initiated under Section 81. In terms of Clause 17 of that Schedule, an action to evict under Section 81 must be brought within 3 years from the date of unlawful use of the land or 3 years from the date of the passing of the Delhi Land Reforms (Amendment) Act, 1965 whichever period expire later.

80. A statute or a rule of limitation, as has been repeatedly held, is a prescription of repose and peace. It confers finality to proceedings and orders which cannot be reopened after a period that may be prescribed. The principles underlying the concept of limitation were lucidly explained by the Supreme Court in **Popat and Kotecha Property Vs. State Bank of India Staff. Assn.**¹⁵, as follows: -

7. The period of limitation is founded on public policy, its aim being to secure the quiet of the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. The statute i.e. the Limitation Act is founded on the most salutary principle of general and public policy and incorporates a principle of great benefit to the community. It has, with great propriety, been termed a statute of repose, peace and justice. The statute discourages litigation by burying in one common receptacle all the accumulations of past times which are unexplained and have not from lapse of time become inexplicable. It has been said by John Voet, with singular felicity, that controversies are limited to a fixed period of time, lest they should be immortal while men are mortal. (Also see *France B. Martins v. Mafalda Maria Teresa Rodrigues* [(1999) 6 SCC 627] .)

¹⁵ (2005) 7 SCC 510



8. Bar of limitation does not obstruct the execution. It bars the remedy. (See V. Subba Rao v. Secy. to Govt. Panchayat Raj and Rural Development, Govt. of A.P. [(1996) 7 SCC 626 : 1996 SCC (L&S) 649 : (1996) 33 ATC 341])

9. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So, a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). The idea is that every legal remedy must be kept alive for legislatively fixed period of time. (See *N. Balakrishnan v. M. Krishnamurthy* [(1998) 7 SCC 123] .)

23. Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.

81. It would be apposite to note that Section 190 of the DLR provides for the application of the provisions of the Indian Limitation Act, 1908 subject to the special provisions made in the Schedule which may prescribe a particular period for the initiation of an action under the Act. Section 191 which amplifies the power to frame Rules in clause (d) provisions for prescription of time within which applications and appeals may be made under the Act. However, there is no specific or mandatory period of



limitation within which eviction must be affected. To hold that the right to evict stands obliterated, it would have to be established that there was a failure to take steps to eject within a period of time that stands duly prescribed under the Act or the Rules. Regard must also be had to the fact that for the purposes of execution of an order of eviction made under the Act, the revenue authorities are not obliged to institute independent proceedings under the general law.

82. The Court in the end notices the two circulars which have been relied upon by the respondents. Insofar as the circular of 03 July 2013 is concerned, the same was duly noticed and explained by the Court in **Sushma Kapoor**. Mr. Endlaw has rightly submitted that the aforesaid circular correctly explains the legal position as would obtain under the provisions of the DLR. That circular as was explained by the Court cannot be viewed as arming the revenue officials with the power to exercise their powers under the DLR even though the land no longer falls within the ambit of that statute. The reliance placed on the circular of 04 February 2020 is clearly misplaced for the following reasons. Firstly and as is evident from a comprehensive reading of that communication, it was really not concerned with the issue of pending proceedings and a notification issued under Section 507. It was principally dealing with the issue of grant of no objection certificates. In any case, that circular does not bind this Court and must yield to the extent that the Court has recorded with respect to the scope of Section 150(3)(d) and its impact on proceedings taken out under Sections 81 and 82 of the DLR.



SUMMARY OF CONCLUSIONS

83. Having traversed this distance and upon consideration of the seminal questions which arose in this batch, the Court in summation records its conclusions as follows: -

A. Section 81 is primarily concerned with ensuring that land falling within the ambit of the DLR, is not used for purposes other than those sanctioned under the enactment. The objective underlying the aforesaid provision clearly appears to be to ensure that land as defined under Section 3(13) is not misutilised or diverted to uses other than those permitted under the Act. Additionally, the scheme of the two provisions clearly bears out that proceedings for eviction are statutorily placed in abeyance to enable the occupier to restore the land to its original character. It is only consequent to a failure on the part of the occupier to abide by those directions that eviction and vesting follow.

B. The vesting of the land in the Gaon Sabha consequent to a failure on the part of the occupant to restore the land to its original rural state, proceeds simultaneously with eviction. Vesting as contemplated in Sections 81 and 82 clearly establishes the legislative intent to divest the occupant of all rights claimed in the land and transfer absolute title and interest in the Gaon Sabha. It essentially contemplates the annihilation of the preexisting rights of the owner or occupier.



C. Vesting here is not contemplated as operating in the limited extent of taking over possession but also of the effacement of all rights that may have existed in favour of the owner or occupier thereof. Consequent to a failure on the part of the owner or occupier to comply with the conditional decree, the land must be recognized as coming to the possession and ownership of the Gaon Sabha absolutely and free of all encumbrances.

D. Insofar as matters which would fall in the category of CASE 1, it was fairly conceded that where no proceedings have been drawn or initiated under Section 81 prior to the issuance of the notifications, no authority or jurisdiction would be retained to invoke Section 81. This position clearly flows from the decisions of the Court that have been noticed above and which have consistently taken the view that once the land stands comprised in notifications issued under the DMC or the DDA Acts, it would stand excluded from the application of the DLR. This since it has ceased to answer to the description of land as defined in Section 3(13) of the DLR. The Court thus comes to the firm conclusion that once the area has come to be urbanized and stands comprised in notifications issued under the DMC or the DDA Acts, the respondents would stand denuded of all jurisdiction and authority to initiate proceedings under Section 81 of the DLR thereafter.

E. While dealing with matters which would fall within the ambit of CASE 2, it must be held that once notifications come to be issued



under the DMC or the DDA Acts, they manifest an unequivocal fact of the land becoming urbanized and no longer falling within the sweep of Section 3(13). The Court also bears in mind the indubitable fact that Section 81 is primarily concerned with ensuring that rural land is not diverted to uses other than those specified in Section 3(13). If that be the primary and solitary objective of Section 81, as this Court duly recognises it to be, it would be wholly illogical and incongruous to require the owner or the occupier to restore the land to its agricultural state even though the surrounding area may have become totally urbanised.

F. Where proceedings have merely reached the stage of initiation or a conditional order having been passed, they must be held liable to be dropped or closed. There would remain no legitimate or useful purpose to continue those proceedings once the aforesaid factual position comes to hold the field. Once the operation of the DLR over the land has drawn to a close, there can be no justification to hold that the proceedings under Section 81 which remain at an inchoate stage and a final order of vesting yet to be passed, to be continued and the occupier compelled to restore the land to its agricultural state.

G. The fact that action under Sections 81 and 82 had commenced based on an infraction which occurred prior to the issuance of the notifications under the DMC or the DDA Acts would not constitute a valid ground for continuance of those proceedings



bearing in mind the purpose and intent of the twin provisions of the DLR. The provisions essentially seek to protect agricultural land from being diverted to uses other than those sanctioned and contemplated under that enactment. It would thus be wholly illogical to sanction continuance of those proceedings and turn a blind eye to the topographical transformation of the entire area which may have come about in the meanwhile.

H. The question of the DMC and DDA Act notifications operating retrospectively does not arise when one bears in mind that the proceedings are liable to be brought to a close once the DLR has ceased to apply and the very purpose of the proceedings contemplated under Sections 81 and 82 does not survive. Proceedings under Sections 81 and 82 would draw sustenance and breath from a continuing statutory obligation to safeguard rural land. But once the land itself stands freed from the statutory control of the DLR by virtue of it ceasing to fall in the genres contemplated under Section 3(13), merely because proceedings had been initiated or commenced prior to the promulgation of the notifications, would not constitute a valid legal ground to hold that those proceedings would survive.

I. The view of the Court that closure is warranted does not rest on a retroactive operation of the notifications issued under the DMC or the DDA Acts but the fact that the provisions of the DLR would no longer be applicable and that the rights of parties were



yet to be settled with proceedings remaining at an amorphous or embryonic stage. The proceedings when an order of eviction or vesting is yet to be passed, exist where the rights and liabilities of parties are yet to be finally determined or frozen.

J. The argument based on Section 150(3)(d) must also fail insofar as CASE 2 is concerned bearing in mind the fact that the issuance of a notification under the DMC Act results in not just the dissolution of the Gaon Sabha but the land then coming to be governed by the provisions of the DMC or the DDA Acts.

K.. Lastly, it may be noted that Section 150(3)(d) of the Act uses the expression “*may be continued....*”. Viewed in light of the scheme and intent of Sections 81 and 82, this Court is of the considered opinion that the said provision would not warrant the continuation of those proceedings.

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. The vesting of the land in the Gaon Sabha would not, in the considered opinion of this Court, be impacted by the subsequent



inclusion of the land in a notification issued under the DMC or the DDA Acts.

M. Regard must be had to the fact that the notifications that come to be issued under the aforesaid enactments are not intended to have retroactive application. Those notifications cannot ipso facto be held to have the effect of obliterating the passage of title in the land to the Gaon Sabha which has come about prior in point of time. The Court fails to discern any intendment, explicit or implied, in the DMC or the DDA Acts which may convince it to hold otherwise.

N. The issuance of those notifications constitutes and results in a transformative shift with respect to the administration and control of land forming part thereof. The land then becomes subject to a completely different and distinct statutory regime. The application of the DMC and DDA Acts to the area results in the creation of new obligations and liabilities. The various consequences which necessarily flow upon the issuance of those notifications clearly convinces this Court to hold that they cannot be recognized as impacting orders of vesting which have come to be made prior thereto. It must therefore be held that orders of vesting which came to be passed prior to the promulgation of notifications under the DMC and the DDA Acts would remain intact and cannot be recognized as being set at naught by virtue of those subsequent events.



O. The Gaon Sabha when vested with rights over land in terms of Sections 81 and 82 is not enjoined in law to take any further steps for establishment of its rights and title over the land. The conferment of title is complete the moment a final order comes to be made and vesting is ordered in terms thereof. The act of vesting is neither postponed, stalled nor dependent upon eviction. Merely because the occupier has continued to remain in possession despite an order of eviction would not defer or place in abeyance the legal consequences of vesting which fall into place and come into effect the moment the final order is made.

P. In view of the above, proceedings initiated under Sections 81 and 82 of the DLR, would not ipso facto fall or stand set aside merely on account of subsequent notifications issued under the DMC or the DDA Acts. 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. Once the occupier comes to be divested of title by operation of law, those orders would remain intact and untouched by subsequent notifications.

Q. An order of vesting or eviction undoubtedly entails serious civil consequences insofar as the owner or occupier of the land is concerned. It would also impact the landholders constitutional right to hold, exercise and enjoy rights in property as per law established. Viewed in that light, this Court is of the opinion that it would be wholly incorrect to hold that the right of a landholder



to institute or pursue an appeal which be pending on the date of issuance of the notifications would stand foreclosed or be lost.

R. Abatement extinguishes the right to sue and has the effect of terminating pending legal proceedings without an adjudication of merits. Bearing in mind the serious consequences that would flow if such a state be presumed to come into effect, it would be wholly incorrect and inequitable to hold that the right to institute or pursue a pending appeal at the behest of the landholder would be lost merely because a notification under the DMC or the DDA Acts had come to be issued in the interregnum.

S. Neither the DMC nor the DDA Acts postulate a consequential abatement of pending proceedings. Abatement is not a consequence which can or should be presumed unless the statute so sanction and require. Abatement cannot be assumed based on a surmise bearing in mind the serious consequences which would then ensue in law. The right of the landholder or the occupier to assail an order of eviction or vesting in accordance with law must be recognized as being preserved notwithstanding the issuance of notifications in the interregnum.

T. Once the right of the landholder or the occupier to assail an order of eviction or vesting is recognized, there exists no justification to place the Gaon Sabha in a position inferior to that of the owner or the occupier of the land. It becomes vitally important to reiterate that the provisions of the DMC or the DDA Acts do not



decree or envisage an abatement of pending proceedings or the extinguishment of a right to appeal. In the absence of the statute providing for such a ramification, it would be wholly fallacious to hold otherwise.

U. While with the advent of those notifications, the land ceases to be governed by the provisions of the DLR in “*stricto sensu*”, they do not have the effect of repealing the provisions of the enactment as understood in law. The basic consequence that flows from the issuance of those notifications is that the administration and control of that land comes to be governed and regulated by a different statute. If one were to hold otherwise, it would lead to a situation where the owner or occupier would be left bereft of the right to assail an order of eviction or vesting. Similarly, the Gaon Sabha would stand denuded of the right to challenge orders that may suffer from patent illegalities and that may have been passed by authorities while the Act still applied.

V. The right to institute or continue appeals against final orders passed under Section 81 in situations spelt out in CASE 4 would not stand extinguished merely because the land has in the meanwhile fallen under the control of the DMC or the DDA to be then regulated by the provisions of the respective statutes under which those authorities stand constituted.

W. A reading of the DLR and the Rules framed thereunder would reveal that no power stands conferred upon the Revenue
W.P.(C) 5627/2020 and connected matters Page 78 of 81



Assistant to undertake a merit review. The authority to review one's own decision made in exercise of judicial or quasi-judicial powers, must be founded on an express conferment of power by statute. It is not an inherent power liable to be recognized as inhering in authorities generally. The inherent power to review stands confined to situations which would fall within the ambit of a "procedural review". Review cannot be exercised under the garb of the powers provided for in Section 151 of the Civil Procedure Code.

X. The DLR does not prescribe a period of limitation within which an order of eviction may be executed. To hold that the right to evict stands obliterated, it would have to be established that there was a failure to take steps to eject within a period of time that stands duly prescribed under the Act or the Rules. Regard must also be had to the fact that for the purposes of execution of an order of eviction made under the Act, the revenue authorities are not obliged to institute independent proceedings under the general law.

FATE OF THE WRIT PETITIONS

84. Reverting then to the facts of the individual writ petitions, it may be noted that the facts borne out on the record of W.P.(C) 5627/2020 establish that upon a conditional order coming to be passed, the petitioner drew the attention of the respondents to the fact that the land stood included in a notification issued under Section 507 of the DMC Act. During the W.P.(C) 5627/2020 and connected matters



pendency of the appeal instituted against the final decision of the Revenue Assistant rendered in favour of the petitioner, the land also came to be governed by the DDA Act. There was thus no justification which warranted the framing of directions for the eviction of the petitioner and the vesting of the land in the Gaon Sabha. The Court has already negated the submission of the respondents that proceedings were liable to be continued if initiated prior to the issuance of the notifications, a view which has also been adopted by the appellate authority. In view of the aforesaid, the aforesaid writ petition is liable to succeed and the impugned order of 1 September 2020 deserves to be quashed.

85. Turning then to W.P.(C) 7887/2020, while the land came to be covered under Section 507 of the DMC Act promulgated a few days after the Revenue Assistant had closed proceedings, undisputedly the land stood covered in the MPD 2021 by virtue of notifications issued in 2013. For the aforesaid reason, there existed no justification to enforce Sections 81 and 82 of the DLR and the order of the appellate authority of 18 January 2021 and the proceedings of the pending appeal would merit being set aside and quashed respectively.

86. Insofar as W.P.(C) 7952/2020 and W.P.(C) 7198/2021 are concerned, the Court has already recorded that the appeals preferred raise important jurisdictional questions pertaining to the authority of the Revenue Assistant to reopen and review orders of vesting merely because notifications under the DMC and DDA Acts may have come to be issued. Those and other issues which arise would warrant serious consideration of the appellate



authority. The appeals for reasons recorded hereinabove, cannot be said to abate on account of the notifications which have come to be promulgated. For the detailed reasons recorded in this decision, the challenge raised in these writ petitions fails and the Court leaves it open to the appellate authority to proceed further in accordance with the observations made herein.

OPERATIVE DIRECTIONS

87. Accordingly, and for the reasons recorded hereinbefore, W.P.(C) 5627/2020 shall stand allowed. The impugned order of 1 September 2020 is hereby quashed. W.P.(C) 7887/2020 for reasons aforementioned shall also stand allowed. The impugned order of 18 January 2021 and the proceedings in the pending appeal shall stand quashed.

88. W.P.(C) 7952/2020 and W.P.(C) 7198/2021 shall stand dismissed. The Court leaves it open to the appellate authorities to proceed in the pending appeals in accordance with law bearing in mind the observations and findings entered herein.

भारतमेव जयते

YASHWANT VARMA, J.

FEBRUARY 4, 2022

SU/neha/bh