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

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**Date of decision: 10<sup>th</sup> February, 2022**

+ W.P.(C) 8098/2012

**PUSHPANJALI RESIDENTS' WELFARE ASSO AND ANR**

..... Petitioners

Through: Mr. Gaurav Sarin with Mr. S.K.  
Rout, Advs.

versus

**THE DEPUTY COMMISSIONER AND ORS**

..... Respondents

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**YASHWANT VARMA, J. (ORAL)**

1. Heard learned counsel for the petitioner. Although respondents are duly represented, none has appeared when the matter was called.
2. The petitioners here which is a Residents Welfare Association has instituted the present writ petition aggrieved by the order passed by the Collector dated 14 November 2012. By the aforesaid order, the Collector has proceeded to reject a representation which was made by the petitioners pursuant to the liberty accorded to them in terms of the order of 07 March 2012 passed by the Court in W.P.(C) 399/2011.
3. The grievance of the petitioners essentially lies in the continuance of proceedings under Section 81 of the Delhi Land Reforms Act, 1954<sup>1</sup> in respect of land which undisputedly stood covered in a Notification under Section 507 of the Delhi Municipal Corporation Act, 1957<sup>2</sup> promulgated on

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<sup>1</sup> DLR Act

<sup>2</sup> DMC Act



24 October 1994. As per the details which are set forth in Annexure P-5, the individual members were aggrieved by the initiation of action under Section 81 of the DLR Act after the land in question came to be covered in the Notification issued under the DMC Act.

4. Mr. Sarin, learned counsel appearing in support of this petition, has rested his case on the recent decision rendered by the Court in **Sanvik Engineers India Pvt. Ltd & Anr. Vs. Government of National Capital Territory of Delhi Through: Its Department of Urban Development & Anr.**<sup>3</sup> where upon a consideration of the interplay between the provisions of the DLR and DMC Acts, this Court proceeded to record the following conclusions: -

“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 favor of the owner or occupier thereof. Consequent to a failure on the part of the owner or occupier to comply with the

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<sup>3</sup> 2022 SCC OnLine Del 360



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 recognizes 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 urbanized.

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 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."

5. In view of the conclusions arrived at by the Court in **Sanvik Engineers**, it is manifest that the order of the Collector impugned here would not sustain.

6. Accordingly, and following the principles enunciated in **Sanvik Engineers**, the instant writ petition is allowed. The impugned order of 14



November 2012 shall stand quashed and set aside. The Court leaves it open to the individual members of the Petitioners' Association to proceed further in accordance with the principles laid down in the **Sanvik Engineers**.

7. Any proceedings that may be pending before the competent authorities under the DLR Act shall be liable to be decided bearing in mind the principles laid down in **Sanvik Engineers**.

**YASHWANT VARMA, J.**

**FEBRUARY 10, 2022/neha**

