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

% *Decided on: 09.01.2023*

+ W.P.(C) 195/2023 & CM APPLs. 680/2023 & 681/2023

JEEVASHRAM

..... Petitioner

Through: Mr. Rajesh Yadav, Senior
Advocate with Mr. Ruchira V
Arora and Mr. Dhananjay
Mehlawat, Advocates.

(M): 9810322797

Email: ruchiravarora@gmail.com

versus

GOVERNMENT OF NCT OF DELHI &

ORS.

..... Respondents

Through: Mr. Anupam Srivastava, ASC,
GNCTD with Mr. Vasuh Misra,
Advocate for respondent no. 1
and 2.

(M): 9730835755

Ms. Anushkaa Arora, Senior
Panel counsel with Ms. Jyoti,
Mr. Aditya Sharan, Advocates
for respondent no. 3.

(M): 9810570295, 987199212,
011-41030070

+ W.P.(C) 212/2023 & CM APPLs. 767/2023 & 768/2023

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011-41030070.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

CM APPL. 681/2023 (Application under Section 151 CPC for exemption) & CM APPL. 768/2023 (Application under Section 151 CPC for exemption)

1. The present are applications under Section 151 CPC for exemption from filing certified copies of annexures/legible copies of dim annexures.

2. Applications are allowed, subject to just exceptions.

3. Applications are disposed of accordingly.

W.P.(C) 195/2023 & CM APPL. 680/2023 (Application on the principles of Section 151 CPC for stay) & W.P.(C) 212/2023 & CM APPL. 767/2023 (Application on the principles of Section 151 CPC for stay)

4. The present writ petitions have been filed against common order dated 04.11.2022 passed by the Financial Commissioner whereby the Second appeals of the petitioners under Section 185(4) of

the Delhi Land Reforms Act, 1954, (DLR Act) were dismissed, which were sought to be amended and converted to Revision Petitions under Section 187 of the DLR Act.

5. The Second Appeal was dismissed by the Financial Commissioner on the ground that Village Rajokari has been urbanized as per Notification dated 20.11.2019, issued under Section 507(a) of the Delhi Municipal Corporation Act, 1957 (DMC Act). Thus, relying upon the judgment dated 26.03.2010 passed by this Court in the matter of “*Indu Khorana Vs Gram Sabha & Ors*, in W.P. (C) No. 4143/2003, confirmed by Hon’ble Supreme Court vide order dated 05.04.2016, the appeals as filed by the petitioners herein were dismissed thereby holding that the Revenue Courts ceased to have any jurisdiction after issuance of notification for urbanization.

6. The petitioner in both the cases is common and is a Charitable Veterinary Hospital and Shelter Home for animals being run and managed by Jeevashram Foundation, a society registered under the Societies Registration Act, 1960. It had filed petition under Section 85 of the DLR Act before the SDM/Revenue Assistant, for declaration of Bhumidari rights in respect of land bearing khasra no. 446, measuring 4 bighas situated in the Revenue Estate of Village Rajokari. The said case was registered as case no. 69A/RA/97 in the Court of SDM/RA, Vasant Vihar, Kapasera, New Delhi.

7. After filing of the petition under Section 85 of the DLR Act, the petitioner received a notice of show cause from SDM/RA, Vasant Vihar, Kapasera, New Delhi in proceedings under Section 86A of DLR Act and was asked to reply to show cause on 05.09.1997, in

respect of land comprised in khasra No. 446. The said case was registered as Case No. 214/RA/96. The petitioner herein filed objections in response thereto.

8. Subsequently, both the cases i.e. Case Nos. 69/A/RA/97 and 214/RA/1996 were clubbed together. Vide common order dated 16.02.2005 passed by the learned SDM/RA, Vasant Vihar, the case of the petitioner under Section 85 of DLR Act was dismissed as not maintainable. Consequently, an eviction order was passed against the petitioner under Section 86A of the DLR Act.

9. The petitioner challenged the said common order dated 16.02.2005 passed by the SDM/RA by filing two separate appeals, one in respect of dismissal of its petition/case under Section 85 of the DLR Act and the other in respect of passing of eviction/ ejectment under Section 86A of the DLR Act, before the Deputy Commissioner and Collector(South-West), New Delhi. The said appeals were numbered as 11/2005 and 12/2005. Vide common order dated 30.07.2012, the learned Deputy Commissioner dismissed both the appeals of the petitioner.

10. The petitioner filed second appeals before the learned Financial Commissioner Delhi under Section 185(4) of the DLR Act, being Appeal Nos. 298/2012 and 299/2012. During the pendency of the aforesaid second appeals, petitioner filed applications in both the appeals for converting the second appeal into revision petitions under Section 187 of the DLR Act, along with applications for amendment.

11. During the pendency of the second appeals of the petitioner and the applications for amendment, Village Rajokari was urbanized by

Notification issued under Section 507(A) of the Delhi Municipal Corporation Act, 1957 (in short ‘DMC Act’) on 20.11.2019. Consequently, the learned Financial Commissioner by the common order dated 04.11.2002 dismissed both the cases filed on behalf of the petitioner on account of urbanization of the area in question. Thus, the present writ petitions have come to be filed.

12. The primary ground on which the appeals have been dismissed by the Financial Commissioner is the lack of jurisdiction of the Revenue Authority owing to issuance of notification dated 20.11.2019 under Section 507(A) of the DMC Act, by relying upon the judgment in the case of *Indu Khorana vs. Gram Sabha and Others* passed by this Court.

13. Learned Senior counsel for petitioner has drawn the attention of this Court to the judgment in the case of *Sanvik Engineers India Pvt Ltd. Vs Government of National Capital Territory of Delhi, through its Department of Urban Development and Another, 2022 SCC OnLine Del 360*. It has been held therein that in cases where a notification for urbanization is issued during the pendency of an appeal or revision under DLR Act then the said proceedings shall continue. Learned Senior counsel further relies upon the judgment in the case of *Shyam Sunder & Others Vs Ram Kumar and Another, (2001) 8 SCC 24* to contend that even when an Act is repealed, such legislation does not affect the substantive rights of the parties as on the date of the suit or the adjudication of the suit, unless the legislation is retrospective in nature. Thus, it is submitted that the learned Financial Commissioner has erroneously not dealt with the cases of the

petitioners on their merits and has simply dismissed the appeals on the wrong premise that Revenue Courts will not have jurisdiction after urbanization of Village Rajokari.

14. Learned counsel also relies upon Section 150 (3) (d) of the DLR Act.

15. Issue notice.

16. Notice is accepted by learned counsels for respondents.

17. Learned counsels appearing for respondents submit that the judgment in the case of *Sanvik Engineers*, as relied upon by the petitioners, is not applicable to the facts and circumstances of the present case as the said judgment is only limited to Sections 81 and 92 of the DLR Act. However, the said objection is refuted by learned counsel for petitioners, who submits that the judgment in the case of *Sanvik Engineers* will be applicable to the facts and circumstances of the present case also.

18. I have heard learned counsels for the parties and have perused the documents. With the consent of the parties, the matter is taken up for final disposal.

19. It is apposite to note that even if urbanization of a particular area takes place in terms of the notification under the DDA Act or the DMC Act, Section 150 (3) (d) of DLR Act preserves the already pending proceedings instituted prior to such notification for urbanization. All suits, prosecutions and other legal proceedings, which are pending on the date of issuance of the notification under Section 507 of the DMC Act would continue. Section 150(3)(d) of DLR Act, 1954 is reproduced herein below for ready reference:

“150. Establishment and Incorporation Gaon sabha and gaon Sabha Area.

... ..

[(3) If the whole of a Gaon Sabha area ceases to be included in rural areas as defined in the Delhi Municipal 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,

.....

(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;

.....”

20. Reference may be made to the case of ***Sanvik Engineers India Pvt. Ltd. (supra)***. In the said case, this Court has dealt with various categories of cases, which have been classified in accordance with their commencement and pendency either before or after the issuance of notification of urbanization. Thus, with respect to the cases where notification for urbanization has come to be issued during the pendency of an appeal or revision against a final order at the behest of the land holder or Gram Sabha, it has been held that such appeal or revision cannot be said to abate on the date of issuance of notification. It has been held in categorical terms that it would be wholly incorrect and inequitable to hold that the right to pursue a pending appeal at the behest of the land holder would be lost merely because a notification under the DMC or the DDA Acts has come to be issued in the interregnum. Hence, right to continue an appeal under the DLR Act cannot be said to be either lost or extinguished merely upon the

issuance of notifications under the DDA Act or the DMC Act, declaring the area in question as urbanized.

21. It is also relevant to note that Supreme Court in the judgment of *Shyam Sunder* (supra) has categorically held as follows:-

“28. From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation, such legislation does not affect the substantive rights of the parties on the date of the suit or adjudication of the suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of the suit.”

22. Considering the fact that the appeals on behalf of the petitioners were already pending at the time when Village Rajokari was urbanized, it cannot be held that the proceedings as pending before the Financial Commissioner became non-est or that the same could not continue. Therefore, the Financial Commissioner was required to hear the matter on merits and decide the cases accordingly.

23. In view of the aforesaid, the present writ petitions are allowed and the impugned common order dated 04.11.2022 passed by the learned Financial Commissioner in Case No.298/2012 and 299/2012, is set aside. Directions are given to the Financial Commissioner to hear the matters on merits and decide the cases after hearing the parties and due consideration of the cases of the parties, as pleaded before it.

24. Since the matters are being remanded back, case Nos. 298/2012

and 299/2012 are restored to their original numbers, along with the interim orders, if any, passed therein by the learned Financial Commissioner.

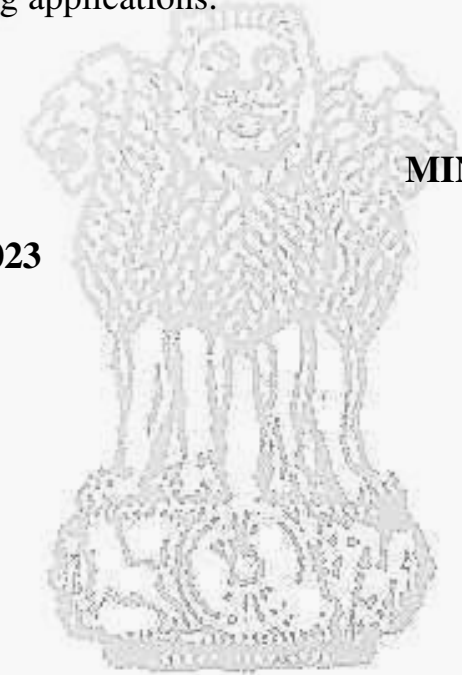
25. The parties are directed to appear before the learned Financial Commissioner on 23.02.2023 at 2:30 pm.

26. The petitions are disposed of with the aforesaid directions along with all the pending applications.

MINI PUSHKARNA, J

JANUARY 09, 2023

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