

\$~13 & 14

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

Date of decision: 25th APRIL, 2023

IN THE MATTER OF:

+ **LPA 169/2022 & CM APPLs. 11464/2022, 11466/2022**

AJAY SINGHAL

..... Appellant

Through: Ms. Aakriti Garg, Advocate for Mr.
Parvinder Chauhan, Mr. Abhilash
Vashisth, Advocates

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Anupam Srivastava, ASC for
GNCTD with Mr. Dhairya Gupta,
Ms. Vasum Misra, Ms. Sarita Pandey,
Mr. Ujjwal Malhotra, Advocates

+ **LPA 188/2022 & CM APPLs. 12719/2022, 12721/2022, 4119/2023**

BLUE BIRD PROPERTIES PVT LTD (NOW BLUE BIRD
PROPERTIES LLP)

..... Appellant

Through: Ms. Aakriti Garg, Advocate for
Mr.Parvinder Chauhan, Mr. Abhilash
Vashisth, Advocates

versus

GOVERNMENT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Anupam Srivastava, ASC for
GNCTD with Mr. Dhairya Gupta,
Ms. Vasum Misra, Ms. Sarita Pandey,
Mr. Ujjwal Malhotra, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT(ORAL)

1. Both the present Appeals challenge the judgment dated 04.02.2022, passed by the learned Single Judge in W.P.(C) 7952/2020 & W.P.(C) 7198/2021, by which the learned Single Judge has dismissed the Writ Petitions filed by the Appellants herein.
2. The short question which arises for consideration is as to whether the proceedings under the Land Reforms Act (including Appellate proceedings) would continue after the area in question has been urbanized by issuance of a notification under the Delhi Municipal Corporation Act. The learned Single Judge by the judgment impugned herein has held that the Appellate proceedings would continue even pursuant to the notification under the Delhi Municipal Corporation Act. The learned Single Judge, while dealing with the case has held as under:

“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 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.”

3. The summary of conclusions, as given by the learned Single Judge, is as under:

“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 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."

4. Though the learned counsel appearing for the Appellants has stated that she has been appointed only recently and prayed for some time, Mr. Anupam Srivastava, learned ASC for GNCTD, in his usual fairness, has stated that this question is no longer *res integra* and the Apex Court in Mohinder Singh (Dead) through LRs and Ors. v. Narain Singh and Ors., **2023 SCC OnLine SC 261**, has decided the issue in favour of the Appellants herein. Relevant portions of the said judgment reads as under:

"31. To simplify it further, once there is a notification issued by the competent authority in exercise of power under Section 507(a) which is a special provision in reference to rural areas, such of the rural areas cease to be included therein upon issuance of the notification and shall thereafter include in and form part of the

urban areas in terms of the notification. Sub-clause (b) and (c) of Section 507 deals with the nature of grant of exemption or levy of taxes for such of the areas falling within the scope and ambit of the Act, 1957.

32. At the same time, Section 502 on which the learned counsel for the appellants has given more emphasis, it only provides that this Act (Act 1957) shall not be construed authorizing disregard to any law for the time being in force and rightly so for the reason, that scope and ambit of the Act, 1954, in no manner, has to be disregarded by the provisions of the Act, 1957.

33. At this stage, if we look into the Delhi Development Act, 1957(hereinafter being referred to as the “DDA Act”), it nowhere makes a distinction in the nature of land whether it is rural or urban, as the case may be. The DDA Act, 1957 is enacted with an object of development of Delhi according to sanctioned plan and for matters ancillary thereto. If we consider the term ‘development’ as defined under Section 2(e) of the DDA Act, it clearly notifies that such of the area which has been declared to be a development area under Section 12, after publication in the official gazette, shall be considered a development area within the purport of the Act and it is a complete code in itself for the purpose of disposal of land. The expression ‘land’ in Section 2(l) is in reference to the Land Acquisition Act, 1894.

34. Relevant Sections of Act, 1957 are reproduced hereunder:—

“2(e) “development area” means any area declared to be a development area under sub-section (1) of section 12;

2(l) the expression “land” shall have the meaning

assigned to it in section 3 of the Land Acquisition Act, 1894.

12. Declaration of development areas and development of land in those and other areas.—

(1) As soon as may be after the commencement of this Act, the Central Government may, by notification in the Official Gazette, declare any area in Delhi to be a development area for the purposes of this Act:

Provided that no such declaration shall be made unless a proposal for such declaration has been referred by the Central Government to the Authority and the Municipal Corporation of Delhi for expressing their views thereon within thirty days from the date of the receipt of the reference or within such further period as the Central Government may allow and the period so specified or allowed has expired.

(2) Save as otherwise provided in this Act, the Authority shall not undertake or carry out any development of land in any area which is not a development area.

(3) After the commencement of this Act no development of land shall be undertaken or carried out in any area by any person or body (including a department of Government) unless,—

(i) where that area is a development area, permission for such development has been obtained in writing from the Authority in accordance with the provisions of this Act;

(ii) where that area is an area other than a

development area, approval of, or sanction for, such development has been obtained in writing from the local authority concerned or any officer or authority thereof empowered or authorised in this behalf, in accordance with the provisions made by or under the law governing such authority or until such provisions have been made, in accordance with the provisions of the regulations relating to the grant of permission for development made under the Delhi (Control of Building Operations) Act, 1955 (53 of 1955), and in force immediately before the commencement of this Act:

Provided that the local authority concerned may [subject to the provisions of section 53A] amend those regulations in their application to such area.

(4) After the coming into operation of any of the plans in any area no development shall be undertaken or carried out in that area unless such development is also in accordance with such plans.

(5) Notwithstanding anything contained in sub-sections (3) and (4) development of any land begun by any department of Government or any local authority before the commencement of this Act may be completed by that department or local authority without compliance with the requirements of those sub-sections.”

35. *So far as the DDA Act is concerned, it is only for the purpose of development of Delhi according to the sanctioned master plan and zonal development plan notified under Section 7 of the Act and for matters ancillary thereto regardless of fact whether it is a rural*

area or urbanized which is for different purposes covered by the provisions of the Act, 1954 and Act 1957.

36. After harmonizing the provisions of the Act, 1954 and Act 1957, we are of the considered view that once a notification has been published in exercise of power under Section 507(a) of the Act, 1957, the provisions of the Act, 1954 cease to apply. In sequel thereto, the proceedings pending under the Act, 1954 become non est and loses its legal significance”

5. In view of the above, the judgment under appeal has been over-ruled by the judgment passed by the Apex Court.

6. Resultantly, the Appeals are allowed. Pending applications, if any, are disposed of.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

APRIL 25, 2023

Rahul