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

% *Decided on: February 15th, 2023*

+ W.P.(C) 2643/2020 & CM APPL. 9226/2020
SH. VINOD AND ORS. Petitioners

Through: Mr. Ravi Gupta, Senior
Advocate with Mr. A.K. Sen
and Mr. Sachin Jain,
Advocates.
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versus

THE LT. GOVERNOR OF DELHI AND
ANR. Respondents

Through: Mr. Shourya Dasgupta with
Ms. Mreganka Kukreja,
Advocates for Mr. Shadan
Farasat, ASC, GNCTD for
respondent no. 1.
Mr. Shourya Dasgupta,
Advocate for Mr. Shadan
Farasat, ASC.
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CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA
[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

1. The present writ petition has been filed for issuance of directions against the respondents for quashing/setting aside the order dated 05.02.2020 passed by the respondent no. 1. By way of the impugned order, respondent no. 1 has set aside the order dated

14.06.2017 passed by the SDM/RA by which the said authority had held that the petitioners herein were not having land in excess of the ceiling limit and had dropped the proceedings under the Ceiling Act, 1960. However, by way of the impugned order, it has been held that the petitioners herein are holding excess land measuring 52 bighas 5 biswas and the notification dated 01.05.1976 holding the bhumidar having excess land was confirmed.

2. The petitioners are the legal heirs of late Amar Singh, who was Bhumidar of his agricultural holding in Village Ali, New Delhi. Proceedings under the Delhi Land Holding (Ceiling) Act, 1960 (hereinafter referred as 'Ceiling Act') were initiated against Amar Singh by the Competent Authority thereby holding that 52 bighas 5 biswas of land in Village Ali, belonging to late Amar Singh was excess land by its order dated 27.04.1976.

3. Sh. Amar Singh died on 30.05.1976 leaving behind the petitioners as the surviving legal heirs. A Revision petition was filed by the petitioners before the Lieutenant Governor of Delhi against the order of the Competent Authority and Gazette notification dated 01.05.1976. The said revision petition was dismissed by the Lieutenant Governor by way of order dated 22.02.1978.

4. Feeling aggrieved by the said order, petitioners approached this Court by way of W.P. (C) No. 988/1978. By order dated 10.07.2003, this Court set aside the order dated 22.07.1978 passed by the Lieutenant Governor and remanded the matter back for a fresh decision.

5. The said Revision petition was again heard by the Lieutenant

Governor and by order dated 18.01.2012, the Revision petition was allowed. It was held that the objections raised on behalf of the petitioners against the Gazette notification needed careful consideration and de novo decision. The Lieutenant Governor remanded the case to the Additional Collector (Revenue), South District to decide the objections raised on behalf of the petitioners with respect to the Ceiling notification dated 01.05.1976. It was further directed that the revenue records of the relevant period was to be considered to assess the nature of the land, number of crops grown in a year, source of irrigation and the choice of surplus land, etc.

6. In the meantime, the revenue district of Delhi was reorganised and matter was referred to ADM (SE) under whose jurisdiction the area falls. The remanded case was accordingly taken up by the ADM (SE), who directed the representative of the Revenue Authority to place on record the file of Village Ali in respect of the proceedings by the Competent Authority in pursuance whereof the Gazette notification dated 01.05.1976 was published. Despite several opportunities, the main file could not be produced before the said authority by the Department. It was brought to the notice of the Learned ADM (SE) that the said file was not traceable.

7. Thus, the learned ADM (SE) in the absence of the case file of the petitioners, directed the petitioners to submit their objections in writing. It further directed the Revenue Authority to submit its reply to the said objections. Subsequently, by order dated 29.11.2013, the learned ADM (SE) dismissed the objections filed by the petitioners and decided the case against the petitioners herein thereby holding that

the petitioners were holding land in excess of ceiling limit.

8. Feeling aggrieved by the order dated 19.11.2013 passed by the ADM (SE), the petitioners preferred a Revision Petition being Revision case no. 01/2014 under Section 20 of the Ceiling Act before the Lieutenant Governor Delhi. Vide order dated 12.03.2014, the Revision petition of the petitioners was allowed. It was held that since the original file of the Competent Authority was not traceable, fresh inquiry was to be done and accordingly the matter was remanded to the Competent Authority/SDM (Sarita Vihar) to decide the objections of the petitioners after hearing all concerned.

9. Upon remand, the matter was taken up by the Revenue Assistant (Sarita Vihar). The petitioners reiterated their stand that they do not hold any excess land. The said authority observed that the original file of the competent authority was untraceable. The case was heard and by order dated 14.06.2017, it was held that there was no excess land with the petitioners.

10. The aforesaid order dated 14.06.2017 passed by the Court of Revenue Assistant, Sarita Vihar was challenged by respondent no. 2 i.e. Delhi Government before respondent no. 1 i.e. Lieutenant Governor of Delhi. After hearing arguments from both sides, respondent no. 1 reserved the matter for orders.

11. After reserving the case for orders, the respondent no. 1 directed the respondent no. 2 to bring on record certain documents like Masabi, Sijra, etc. Without intimation to the petitioners herein, the said documents were taken into consideration and impugned order dated 05.02.2022 was passed.

12. Mr. Ravi Gupta, senior advocate appearing on behalf of the petitioners has confined his arguments only on the aspect of violation of principles of natural justice. He has vehemently contended that the impugned order dated 05.02.2020 was passed on the basis of certain additional documents, which were requisitioned behind the back of the petitioners after the judgment was reserved. Thus, it is submitted that no opportunity was granted to the petitioners to make submissions with respect to the fresh documents.

13. Learned counsel appearing on behalf of the respondents, on the other hand, contends that the land in question has already been acquired and compensation has already been paid to the petitioners. Thus, it is submitted that the present petition involves only an academic question. The land has been acquired under Award No. 3/97-98 dated 10.12.1997, 4/98-99 dated 15.02.1999 and 09/94-95 dated 06.06.1994. Possession of the land has already been taken over. Once the possession has been taken over, the land vests absolutely in the government and is free from all encumbrances.

14. It is further submitted on behalf of the respondents that the respondent no. 1 passed the order in question on the basis of the revenue records. The revenue records/entries made in the annual register maintained by the revenue authorities are presumed to be true until contrary is proved as per Section 30 of Delhi Land Revenue Act, 1954 (DLRA). All maps, list, books and registers are open to public inspection. Further, under Section 41 of the Act, all entries made in the records are presumed to be true until contrary is proved. Thus, it is submitted that the decision by the respondent no. 1 was not on the

basis of any additional documents in strict sense as the said documents were revenue records, which are public records and are available in public domain. The decision has been made on the basis of unrebutted revenue record, therefore, the contention on behalf of the petitioner is liable to be rejected.

15. In rejoinder, learned senior counsel for the petitioner submits that though the land in question has been acquired, the question whether the petitioners were in possession of excess land in terms of the Ceiling Act would be required to be decided. The compensation paid to the petitioners is not in terms of the land which was actually in possession of the petitioners, on the basis of impugned order dated 05.02.2022 passed by the respondent no. 1. Thus, learned senior counsel for the petitioners submits that the matter be remanded back to the respondent no. 1.

16. I have heard learned counsels for the parties.

17. Reading the impugned order dated 05.02.2020 passed by the respondent No.1 clearly shows that after reserving the order in the present case, the respondent No.1 issued notice to the Revenue Authorities with direction to place on record the various documents pertaining to the area in question. Thus, the relevant portion of the impugned order dated 05.02.2020 reads as under:

“Since the original record / file stated to be not traceable as mentioned In the order Impugned also, and since the Form P-4 placed on record only deals with the actual status of the land and cultivation whereas as per the law vide section 3 of the Delhi Land Holdings (Gelling) Act, 1960 the mandate Is to examine as to whether the land Is capable of two crop / one crop and also as to whether the

land Is assured of Irrigation from government source / private source and since It Is only on this basis the excess land could be determined, I found It appropriate and proper to call for the relevant records. Accordingly, after reserving the order, the revenue authority / ADM (South East) vide notice dated 05.12.2019 was directed to place on record, the certified copies of the revenue records like Masavi, Sizra, Khatauni - Pamaish, Field Book etc. of Village Aali (District South-East). In response to the notice, the relevant records have been placed on record.”

18. Thus, on the basis of the documents as were called from the Revenue Authorities subsequently after reserving the case for passing of order, findings in the impugned order were given by respondent No. 1. Thus, under the head findings and conclusion in the impugned order, it is recorded as follows:

“FINDING:

I have examined the entire Masavi / Sizra of Village Aali containing various fields / chunks.”

....

“CONCLUSION:

For the reasons stated above, the impugned order dated 14.06.2017 is set-aside being perverse and not based on relevant material. The competent authority in the impugned order dated 14.06.2017 has failed to apply its mind to the relevant facts and material on record, particularly the unrebutted revenue record such as Form P-4, P-6, Khatauni Paimaish and Masavi / Sizra of Village Aali etc., containing relevant material particulars and the information therein found to be necessary to adjudicate the issue involved. The impugned order suffers from factual and legal flaw. I found the Bhumidar holding excess land measuring 52 bigha 5 biswa. The notification dated 01.05.1976 holding the Bhumidar having excess land measuring 52 bigha 5 biswa stands confirmed. The

revision petition is accordingly allowed.”

19. Perusal of the aforesaid clearly shows that the respondent No. 1 sought additional documents from the Revenue Authorities after reserving the orders. Therefore, the petitioners were never given any chance to address and make their submissions with respect to the documents which the respondent No. 1 sought and considered behind the back of the petitioners. Though the additional documents as considered by the respondent No. 1 may be Revenue Records which are public documents, however, the legal principles which are followed as law of the land would clearly manifest that opportunity of fair hearing has to be granted to each party at the time of adjudication. In fact, grant of opportunity of hearing to each party before any decision is one of the hallmarks of Rule of Law which is firmly ensconced in the legal system of our Country.

20. Calling for certain additional documents after reserving case for passing order and passing judgment after considering the said additional documents, without giving chance to a party to make submissions on the said additional documents, is certainly violative of the Principles of Natural Justice. If any documents are being considered by an adjudicating authority, the parties in question have to be given an opportunity to present their case.

21. Supreme Court in the case of ***Asit Kumar Kar Vs. State of West Bengal and Others***, reported as (2009) 2 SCC 703 has held as follows:

“4. It is a basic principle of justice that no adverse orders should be passed against a party without hearing him. This is the fundamental principle of natural justice and it is a basic canon of jurisprudence. In the seven-Judge Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] it has been observed in para 55 thereof: (SCC p. 660)

“55. ... So also the violation of the principles of natural justice renders the act a nullity.””

22. Further, reference may also be made to Section 20 of the Ceiling Act that deals with the case in the present proceedings before the Lt. Governor. The said section reads as under:

“20. Revision.—(1) The Chief Commissioner may, on an application for revision made to him or otherwise, call for the record of any proceeding pending before, or disposed of by, the competent authority or the Deputy Commissioner or any officer authorised by the Chief Commissioner under sub-section (2) of section 9.

(2) No order varying the decision of the competent authority or the Deputy Commissioner or revising the list published under section 9 which prejudicially affects any person shall be made without giving him an opportunity of being heard.”

23. In view of the aforesaid, the impugned order dated 05.02.2020 passed by respondent No. 1 is set aside. The matter is remanded back to the respondent No. 1 to grant opportunity of hearing to the petitioners on the aspects of the Revenue Records, which have been placed on record subsequent to the reserving the case for orders by the respondent No. 1.

24. Respondent No. 1 is at liberty to hear all the concerned parties afresh and pass appropriate orders accordingly.

25. With the aforesaid directions, the present writ petition is disposed of. The pending applications are also disposed of accordingly.

