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

% *Decided on: 1st February, 2023*

\+ W.P.(C) 11515/2022 & CM APPL. 34051/2022

ANIL KUMAR TYAGI & ANR. ..... Petitioners

Through: Mr. Daleep Dhyani, Mr. Rahul Chauhan, Advocates. (M:8750883003) (rahulchauhan0104@gmail.com

versus

SUSHIL KUMAR TYAGI AND ORS ..... Respondents

Through: Mr. K.L. Jangani, Mr. Imran Alam Sheikh, Mr. Manindra Dubey & Mr. Shailza Kant Dubey, Advocates for R-1 (M:9810263115) (admanindra@gmail.com)
Ms. Mehak Nakra, ASC, Civil/GNCTD for R-2 (M:9871144582) (advmehaknakra@gmail.com)

**CORAM:**
**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**[Physical Hearing/ Hybrid Hearing]**

**MINI PUSHKARNA, J. (ORAL):**

1. The present writ petition has been filed challenging the order dated 29.07.2022 passed by the Ld. Financial Commissioner in REV. PET. No.207/2021. By way of the impugned order, Ld. Financial

Commissioner has set aside the consent order dated 30.11.2021 passed by the Revenue Assistant, Civil Lines, Delhi.

2. It is the contention on behalf of the petitioners that the Court of Financial Commissioner did not have any jurisdiction to pass the impugned order, as the said revision petition was not maintainable before the learned Financial Commissioner. It is submitted that against the order of the Revenue Assistant, an appeal is to be filed before the Deputy Commissioner in terms of Entry 11 of Schedule I of the Delhi Land Reforms Act, 1954 (hereinafter referred to as DLR Act, 1954). Ld. Counsel for petitioner submits that after the first appeal, second appeal can be filed before the Chief Commissioner, who is the Financial Commissioner in Delhi. Thus, he submits that a revision petition having been filed directly against the order of the Revenue Assistant dated 30.11.2021 before the Financial Commissioner, without filing any appeal before the Deputy Commissioner was improper. Order dated 29.07.2022 passed by the Financial Commissioner is without any jurisdiction.

3. On the other hand, learned counsel appearing for respondent No.2 has drawn the attention of this Court to the counter affidavit filed on their behalf. In the counter affidavit filed on behalf of the respondent No.2, it is categorically stated that the area in question i.e. Village Salempur Majra, Burari, Delhi has already been urbanized vide a notification dated 16.05.2017. Thus, she submits that after the urbanization of the village in question, the jurisdiction of the Revenue Courts is ousted.

4. Learned counsel appearing for respondent No.1 has also

opposed the present writ petition. He submits that the order passed by the Revenue Assistant, itself was without any jurisdiction, as the urbanization of the area in question had already taken place.

5. This Court has heard the learned counsels for the parties and has also perused the record.

6. The petitioner No.1 herein had filed a petition on 28.11.2018 before the Revenue Assistant for partition of land by invoking Section 55 and 56 of DLR Act, 1954 against petitioner No.2 and respondent No.1. All the parties duly participated in the proceedings before the learned Revenue Assistant and also submitted drawing for proposed partition of land belonging to the parties. Subsequently, by order dated 30.11.2021, the Revenue Assistant granted decree of partition in favour of the parties.

7. In terms of the order dated 30.11.2021, the Revenue Authorities have carried out the directions of the Revenue Assistant by which mutation proceedings were done. Accordingly, Khatauni was prepared. The petitioners are in possession of the same in terms of the partition deed and the revenue records since then.

8. Respondent No.1, being aggrieved by the order dated 30.11.2021, filed a revision petition before the Financial Commissioner under Section 187 of the DLR Act, being Revision Petition No.201/2021.

9. By the impugned order dated 29.07.2022, the Ld. Financial Commissioner allowed the revision petition. Hence, the present writ petition has been filed.

10. By the impugned order dated 29.07.2022, the learned Financial

Commissioner has categorically held that the order passed by the Revenue Assistant was without any jurisdiction, since the area in question had already been urbanized. Thus, the learned Financial Commissioner clearly held that since the petitioners herein were claiming partition of the land, it is only the Civil Courts that would have the jurisdiction in that regard.

11. The objection of the petitioners with respect to the legality of filing revision petition before Financial Commissioner directly against the order of the Revenue Assistant, is right. The correct course of action would have been to file an appeal before the Deputy Commissioner against the order of the Revenue Assistant and not a revision petition before the Financial Commissioner. However, even if this Court was to set aside the order of the Financial Commissioner, the same would be a fruitless exercise, as the initial order passed by the Revenue Assistant dated 30.11.2021 itself was non-est. Therefore, no useful purpose would be served in setting aside the order of the Financial Commissioner and relegating the respondents herein to file an appeal before the Deputy Commissioner in terms of the DLR Act, 1954.

12. It is seen from the record that in the present case, the issue which was the bone of contention between the parties is the partition of land amongst the three brothers, who are parties before this Court. Earlier, by order dated 30.11.2021, the Revenue Assistant had passed a consent decree by which the land was partitioned and divided amongst three brothers. However, perusal of the order dated 30.11.2021 passed by the Revenue Assistant/ Sub Divisional

Magistrate (Civil Lines) clearly manifests that the proceedings before the Revenue Assistant were initiated on 28.11.2018. Whereas, it has come on record that the area in question i.e. Village Salempur Majra, Burari, Delhi had already been urbanized vide a Notification dated 16.05.2017. Therefore, it is clear that when the proceedings were commenced before the Revenue Assistant in the year 2018, the area in question already stood urbanized. Therefore, clearly the Revenue Assistant had no jurisdiction to entertain the proceedings in the year 2018 or pass the order dated 30.11.2021, when the area in question had already been urbanized in the year 2017.

13. Thus, perusal of the documents on record clearly brings to the fore the fact that the order dated 30.11.2021 passed by the Revenue Assistant was a nullity. When the said order dated 30.11.2021 passed by the Revenue Assistant itself was without any jurisdiction, subsequent proceedings before the Financial Commissioner are also deemed to be non-est.

14. This Court in the case of ***"Sanvik Engineers India Pvt. Ltd. & Anr Vs. Government of National Capital Territory of Delhi & Anr." 2022 SCC Online Delhi 360*** has categorically held that once the area has been urbanized, then the Revenue Authorities will cease to have jurisdiction and the DLR Act, 1954 will cease to apply to such orders. Thus, this Court held as follows:-

> *"**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 v. Gram Sabhai. 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 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.*
*......*
*......*
***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.*
*......*
*.....*
***84.*** *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. …………"*

15. In view of the aforesaid, it is clear that the order dated 30.11.2021 passed by the Revenue Assistant itself was a nullity having been passed without jurisdiction.

16. In view of the aforesaid detailed discussion, the present writ petition is dismissed. However, liberty is granted to the petitioner to approach the Civil Court for any remedy that may be available as per law.

17. Learned counsel for the petitioner at this stage, submits that the requisite entries in the Revenue Record has already taken place pursuant to the order dated 30.11.2021 passed by the Revenue Assistant.

18. In view of the aforesaid submission, it is directed that status quo be maintained by the parties for a period of four weeks to enable the petitioner to seek his remedies in Civil Court.

19. It is made clear that in case, the petitioner does not approach any Civil Court within four weeks or if any order is not passed by any Civil Court in favour of the petitioner, the status quo order passed today by this Court shall cease to have any effect.

20. It is also made clear that this Court has not made any observation on the merits of the case. In case, the petitioner files any case before any Civil Court, the said Civil Court will pass appropriate orders considering the merits of the case, without being influenced by this order. The present petition is disposed of in terms of the aforesaid directions along with pending applications.

**MINI PUSHKARNA, J**

**FEBRUARY 1, 2023/*nc***