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

% *Decided on: 26th May, 2023*

+ W.P.(C) 2257/2018 & CM APPL. 48641/2018
NORTH EAST TRIBAL WELFARE SOCIETY
(REGD)

..... Petitioner

Through: Mr. V.P. Singh, Senior
Advocate with Mr. Om Prakash
and Mr. Gaurav Kumar,
Advocates.
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versus

GOVT OF NCT OF DELHI & ORS Respondents

Through: Mr. Sameer Vashisht, ASC
(Civil) with Mr. Vanshay Kaul
and Mr. Arjun Gupta,
Advocates for respondent no. 1.
Mr. Harish Kumar Garg with
Ms. Khushboo Sharma,
Advocates for respondent no.
5/UOI.

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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 with prayer for setting aside/quashing the impugned order dated 05.12.2017 passed by the District Magistrate, District South-West, Delhi in *Appeal No. 132/2014* under Section 185 of the Delhi Land Reforms Act, 1954 (DLR Act). Further, the petitioner also seeks setting aside of the order



dated 08.04.2013 in *Case no. 207/2010*, titled as ***Gram Sabha Goela Khurd Vs Rajiv Chaudhary & Ors.***, passed by the Sub-Divisional Magistrate (SDM)/Revenue Assistant (RA), Kapashera, Delhi. The petitioner is also challenging the order dated 24.06.2010 passed by the Sub-Divisional Magistrate (SDM)/Revenue Assistant (RA) in case bearing no. SDM/RA/NG/2010/D2496/147 passed under Section 81 of the DLR Act.

2. Learned senior counsel appearing for the petitioner submits that the present case is covered by the judgment of this Court in the case of ***Ruksana Bano and Others Vs Government of NCT of Delhi and Others***, 2023 SCC OnLine Del 1434.

3. It is submitted that the order dated 24.06.2010 as issued by the SDM/RA, Government of NCT of Delhi in the aforesaid case, is also the subject matter of challenge in the present petition. It is submitted that the name of the petitioner herein is clearly mentioned in the impugned order dated 24.06.2010 passed by the SDM/RA, which has already been set aside by this Court in the case of ***Ruksana Bano & Others (supra)***. Thus, it is submitted that the present petition be allowed in terms of the aforesaid judgment.

4. On the other hand, learned Additional Standing counsel appearing for the Delhi Government submits that in the present case, the proceedings under Section 81 of the DLR Act were initiated on 14.01.2010, whereas the notification of 04.06.2010 by which the zonal plan for District South West Delhi, Village Goela Khurd was notified by Delhi Development Authority (DDA), came to be issued only subsequently. Therefore, the proceedings against the petitioner were



rightly continued. He further submits that the petitioner has an alternative remedy to file an appeal before the Financial Commissioner against the impugned order passed by the District Magistrate/Collector, District South West, Kapashera, Delhi. Thus, he submits that the present petition would not be maintainable in the facts and circumstances of the case.

5. I have heard learned counsels for the parties and have perused the documents.

6. Documents on record clearly manifest that the order dated 24.06.2010 as issued by the SDM/RA, Najafgarh, Government of NCT of Delhi that has been challenged in the present petition, has already been set aside by this Court in the case of ***Ruksana Bano & Others (supra)***. Therefore, the present case would squarely be covered by the said judgment.

7. As regards the contention made on behalf of the respondent that the proceedings in the present case can continue since the same were initiated on 14.01.2010, prior to the issuance of the notification dated 04.06.2010, by which the land in question was urbanised by issuance of zonal plan, the same is totally flawed. The fact remains that though the proceedings under Section 81 of the DLR Act were initiated prior to the notification of 04.06.2010, however, no finality was attached to the said proceedings. Therefore, after urbanisation of the land in question, the proceedings under the DLR Act could not have been continued.

8. Supreme Court in the case of ***Mohinder Singh (dead) through LRs and Another Vs Narain Singh and Others, 2023 SCC OnLine***



SC 261 has held as under:

“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.”

9. This Court in the case of ***Ruksana Bano & Others (supra)*** has categorically held as under:-

“24. It is undisputed fact that the DDA had issued a notification dated 04.06.2010 under the provisions of Master Plan of Delhi 2021 notifying zonal plan for District South West Delhi, including village Goela Khurd. Thus, when the land in question was covered under the zonal plan issued by the DDA, then the said land cannot be said to be governed by the provisions of DLR Act any longer. The contention on behalf of the respondents that the said area cannot be considered to be urbanised on the said date as no notification under Section 507 of the Delhi Municipal Corporation Act, 1957 (DMC Act) had been issued, has to be rejected.

25. The matter in question on the aspect of village Goela Khurd having been urbanised upon issuance of notification by the DDA on 04.06.2010, is no longer res integra. This question was considered by this Court in the case of M/s Shri Neelpadmaya Consumer Products Pvt. Ltd. Vs. Sh. Satyabir @ Satbir and Ors.1. In the said case, this Court has categorically held as follows:

“23. I agree with the argument which is urged on behalf of the plaintiff that a notification for urbanization need not only be through a notification under Section 507 of the Delhi Municipal Corporation Act as the later part of Section 3(13) of the Act does not in any way



require that there is only one manner of notification viz only under Section 507 of the Delhi Municipal Corporation Act. This later part of Section 3(13) of the Act does not talk of a notification only under Section 507 of the Delhi Municipal Corporation Act. The requirement of this later part of Section 3(13) of the Act is only that a notification is issued in the Official Gazette to make the land as part of the Delhi town and New Delhi town. Once a notification is issued applying a zonal plan issued pursuant to the master plan showing that subject lands are covered under the zonal plan issued by the DDA, in such a situation, it has to be held that the lands cease to be the lands covered under the Act because of issuance of a notification in the Official Gazette results in the lands becoming part of the Delhi town. Additional reasoning on this aspect can be understood from the object and the language found in Section 1 and Sections 3(5) and 3(15) of the Act and which Sections show that once an area falls within a town area and an area ceases to be an agricultural land because it has to be developed as part of the development of the Delhi town or New Delhi town, then such an area no longer remains an agricultural area for being covered under the expression land as defined in Section 3(13) of the Act. With humility, I am in complete agreement with the observations made by the learned Single Judge of this Court in the case of Guru Pratap Singh (supra) and which arrives at the same conclusion that once the land ceases to be agricultural, the land ceases to be the subject matter of the Act.

24. I may note that the plaintiff has proved the zonal plan Ex.PW 5/1 and the notification Letter dated 4.6.2010 as Ex.PW 5/2 and these documents clearly show that the entire village Goela Khurd



and wherein the suit land is located is the subject matter of the zonal plan issued under the Delhi Development Authority. As per the aforesaid discussion, as also the ratio of the learned Single Judge in Gur Pratap Singh (supra), once the land is the subject matter of a zonal plan issued under Section 11 of the Delhi Development Act, the land is beyond the purview of the Act.....

26. Hence, the position is clear that a land becomes urbanised not only by way of notification issued under Section 507 of DMC Act, 1957 but also by way of notification by the DDA issuing zonal plan under the Master Plan for areas in question. Once zonal plan has been issued by the DDA under the Master Plan for an area in question, the said lands cease to be lands covered under the DLR Act. Even a notification issued by the Central Government under Section 11 of The Delhi Development Act, 1957 bringing an area within the ambit of a zonal plan of the DDA, has the effect of encompassing such area within the limits of urbanised land. Thus, when village Goela Khurd, wherein the land in question is located, is subject matter of the zonal plan issued by the DDA, the said village stood urbanised and provisions of DLR Act ceased to have any applicability over the said area.

27. This Court in the case of Gur Partap Singh Vs. Union of India & Ors.2 took note of the fact that by its gazette notification, the DDA amended the Master Plan wherein construction for commercial use was allowed in certain rural zones. Thus, it was held that once such option for construction for commercial use was available, then such land would cease to be agricultural and in that eventuality there was no question of application of DLR Act. Para-19 of the said judgment reads as follows:

“19. This matter can be looked into from another aspect. The notification amending the Master Plan clearly provides that the land in question can be used for the purpose of a motel. Once this option is available and is exercised by owner of



the land, the land is no more being used for agricultural purposes. Thus, once the land is elected to be used by the owner for a motel, permission for which has been granted under the amendment to the Master Plan, it no more remains agricultural land under the meaning of Section 3(13) of the Land Reforms Act. For this reason also, there would be no occasion for obtaining any permission. The Land Reforms Act is an enactment for protecting the agricultural use of the land. Once this land itself ceased to be agricultural, there is, really speaking, no question of application of the Land Reforms Act. Needless to say, this is on account of the fact that there is permissible non-agricultural use of a motel in pursuance to the notification of 1995.”

28. In view of the aforesaid, when the land in question ceased to be governed by the DLR Act, the order dated 24.06.2010 passed by the Court of SDM/RA (Najafgarh) under Section 81 of the DLR Act, is clearly without any jurisdiction. As noted hereinabove, the area in question stood converted to urban land with effect from 04.06.2010. Therefore, the SDM/RA had no authority to pass any order under Section 81 of the DLR Act on 24.06.2010.

29. Once a particular area is subject matter of notification under The Delhi Development Act, 1957 by notifying the Master Plan or Zonal Plan, then such land becomes urbanised and is out of the scope of the application of the DLR Act. Resultantly, the jurisdiction of the revenue authority ceases and is ousted.

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33. On account of the non-est and ex parte order dated 24.06.2010 passed by the SDM/RA, valuable rights of the petitioners to their property, have been adversely affected and they have been divested of their property. Supreme Court has held that Right to Property is not only a Constitutional or a Statutory Right, but also a Human



Right. Thus, in the case of Tukaram Kana Joshi and Others Vs. Maharashtra Industrial Development Corporation and Others⁵, (2013) 1 SCC 353, it has been held as follows:

“9. The right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment, etc. Now however, human rights are gaining an even greater multifaceted dimension. The right to property is considered very much to be a part of such new dimension. (Vide Lachhman Dass v. Jagat Ram [(2007) 10 SCC 448], Amarjit Singh v. State of Punjab [(2010) 10 SCC 43 : (2010) 4 SCC (Civ) 29], State of M.P. v. Narmada Bachao Andolan [(2011) 7 SCC 639 : (2011) 3 SCC (Civ) 875 : AIR 2011 SC 1989], State of Haryana v. Mukesh Kumar [(2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769 : AIR 2012 SC 559] and Delhi Airtech Services (P) Ltd. v. State of U.P. [(2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673 : AIR 2012 SC 573])”

(citations provided)

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39. In view of the aforesaid detailed discussion, the impugned order dated 24.06.2010 passed by the SDM/RA (Najafgarh), GNCTD is hereby set aside, as being non-est and nullity, and having been passed without any jurisdiction. Consequently, the respondents are directed to hand over possession of the land under the ownership of the petitioners forthwith, viz. land comprised in Khasra Nos. 24/6/1/2 (0- 18), 15/2 (1-12), 25/10/1 (0-15), 25/11 (4-16), 12 (1-14), 25/20/1 (0-8) and 20/2 (3-18), situated in the revenue estate of village Goela Khurd, New Delhi. The petitioners are directed to approach the concerned



Revenue Authorities with requisite documents of ownership in their favour for taking over possession of their respective lands.”

10. In view of the aforesaid, it is undisputed that the area in question stood urbanized after issuance of notification dated 04.06.2010. By way of notification dated 04.06.2010, the DDA notified zonal plan for District South West Delhi, including Village Goela Khurd. Once zonal plan was issued under the Master Plan for the area in question, it ceased to be covered under the DLR Act. Thus, any proceedings under the DLR Act that were continued against the petitioner after the aforesaid notification, were clearly without any jurisdiction.

11. The other submission made on behalf of the respondent that the impugned order passed by the Deputy Commissioner ought to have been challenged before the Financial Commissioner and that the present writ petition would not be maintainable before this Court, also cannot be considered to be justified. Once the land already stands urbanised and as per the law declared by the Supreme Court, no proceedings under DLR Act can continue after urbanisation of an area, it would not be appropriate to direct the petitioner herein to approach the learned Financial Commissioner at this stage. As per law of the land, the learned Financial Commissioner, anyway would have no jurisdiction at this stage under the DLR Act. Therefore, no order can be passed at this stage relegating the petitioner to file appeal before the learned Financial Commissioner, when the said authority has been rendered without any jurisdiction qua any proceedings under the DLR



Act, after the urbanisation of the area in question.

12. It is pertinent to note that in the present case, the land in question has been handed over to the Education Department of Government of NCT of Delhi by the Gram Sabha. Since no proceedings under the DLR Act could have continued after the urbanisation of the land in question, the order of vesting against the land of the petitioner, is clearly illegal. Thus, the handing over of possession of the land of the petitioner by Gram Sabha to the Department of Education of Delhi Government, cannot be upheld by this Court.

13. This Court notes that vide order dated 15.03.2018, this Court had directed that status quo be maintained in respect of the land in question till the next date of hearing, which status quo order had been continued from time to time. Thus, the interest of the petitioner was secured by this Court.

14. In view of the fact that the land has already been handed over to the Education Department of the Delhi Government, it is directed that the said land be handed over back to the petitioners.

15. Accordingly, the petitioners are directed to approach the respondent with their documents pertaining to ownership of their land in respect of 1/5th share of their share in the land in question, i.e., 2 bighas 16 biswas in the undivided land admeasuring 14 bighas 4 biswas situated in khasra no. 24/6/1/2(0-18), 24/15/2(1-12), 13/29(0-3), 25/10/2(0-15), 25/11(4-16), 25/12(1-14), 25/20/1(0-8) and 25/20/2(3-18), in the Revenue Estate of Village Goela Khurd, South-West District, New Delhi.



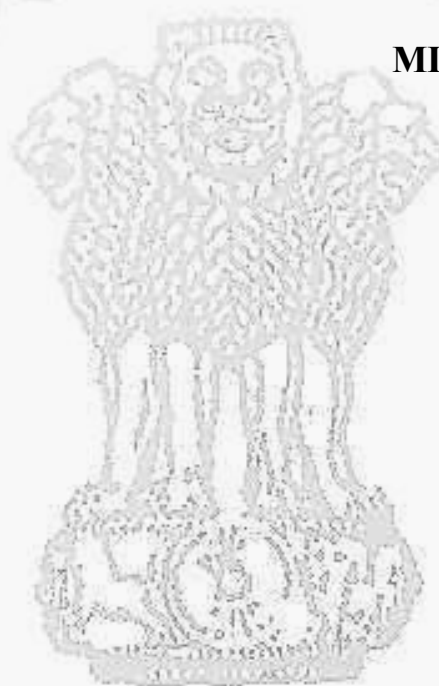
16. Upon the petitioners showing their documents of ownership, the respondents are directed to consider the case of the petitioners and hand over possession to the petitioner of their respective lands expeditiously, preferably within a period of four months from today.

17. With the aforesaid directions, the present writ petition is disposed of.

MINI PUSHKARNA, J

MAY 26, 2023

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