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

% Judgment delivered on: 02.04.2024

+ **W.P.(C) 5617/2020 & CM APPL. 10227/2024****SH ADESH JAIN & ANR** Petitioners

versus

GOVT OF NCT OF DELHI AND ORS. Respondents**Advocates who appeared in this case:**For the Petitioners : Mr. Ved Pal Rana, Ms. Jyoti Nambiar
and Ms. Bhawana, AdvocatesFor the Respondents : Ms. Hetu Arora Sethi, ASC (GNCTD)
with Mr. Arjun Basra, Advocate for
R-1
Mr. Nitin Sangwan and Mr. Rohit
Balyan, Advocates for R-4**CORAM:**
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**J U D G M E N T****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]**

1. This is a writ petition under Article 226 of the Constitution of India, 1950, *inter alia*, seeking the following reliefs :-

"a) call the record of proceedings conducted by the respondents no.2 and 3 and examine the legality and impartiality of the same;

b) pass a writ of mandamus, certiorari and prohibition or any other writ, order or direction thereby quashing/setting-aside the impugned notice/orders i.e. (i) Notice bearing F.No.3058/

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By: VINOD KUMAR
Signing Date: 10.04.2024
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CO/AP/2019/23053-57 dated 05.08.2020, (ii) Eviction Notice bearing No.3086_06.02.2019/CO/AP/12020/22475 dated 20.08.2020 and (iii) Handing over of possession notice bearing No.3085/CO/AP/06.02.2079/2020/22530 dated 22.08.2020 issued by the respondents no.2 and 3 in respect of land measuring 900 sq.yds. comprising in Old Khasra No.14/8 and New Khasra No.53/25 and 53/26 at Village Nangli Poona, Delhi belonging to the petitioners, in the interest of justice.”

2. Mr. Rana, learned counsel appearing for the petitioner submits that the petitioner claims to be the purchaser of the subject land from the erstwhile owner by virtue of traditional documents executed in the year 1989 and had, consequent thereto, constructed factory premises on such land. In the meanwhile, the consolidation proceedings for the subject land of Village Nangli Poona had commenced in the year 1989 and concluded in the year 1999. On the conclusion of such consolidation proceedings, the respondent no.4 claims to have been allotted the subject land.

3. The petitioner being aggrieved of such allotment post consolidation, had filed an appeal/objections before the Revenue Assistant. By virtue of the order dated 13.03.2008, the appeal filed by petitioners was allowed by the Revenue Assistant. The said order was challenged by the respondent no.4 before the Financial Commissioner by virtue of a Revision Petition. The said Revision Petition was allowed by the Financial Commissioner *vide* the order dated 28.04.2009.

4. The petitioner being aggrieved of the said order passed by the Financial Commissioner, has challenged the same by writ petition bearing W.P.(C) 9320/2009. By virtue of the order dated 27.05.2009, this Court had set aside the order of the Financial Commissioner and



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remitted the matter back to the Revenue Assistant for reconsideration of petition under Section 85 of Delhi Land Reforms Act, 1954 (hereinafter referred to as “DLR Act, 1954”) filed by the petitioner.

5. The said petition under section 85 of DLR Act, 1954 filed by the petitioner was dismissed by the Revenue Assistant on 01.02.2019 on the ground that the revenue authority did not have any jurisdiction as the subject land falls within the Extended Lal Dora of the village during the consolidation proceedings. Since the revenue authority ceased to have jurisdiction, the petitioner was constrained to file a civil suit seeking declaration of title and permanent injunction before the Civil Court, District Courts, Rohini, Delhi, which is still pending. The private respondent herein is also impleaded as one of the defendants therein.

6. In the meanwhile, by virtue of notice dated 05.08.2020 issued by the Revenue Assistant, the SDM/Revenue Assistant had alleged that the petitioner was found to have encroached about 327 Sq. Yds. in Khasra no. 26/1, 402 Sq. Yds. in Khasra No.26/2 and 55 Sq. Yds. at Phirni Road let without any right or title over the same inasmuch as it was informed that some other persons were allotted such plots of land.

7. To the said notice, the petitioner had given his reply on 11.08.2020 wherein the petitioner had specifically referred to order dated 01.02.2019 passed by the then Revenue Assistant stating that the petition under section 85 of the DLR Act, 1954 would not be maintainable on the ground that the said land had fallen within the Extended Lal Dora and the provisions of DLR Act, 1954 would cease to apply thereto.



8. Despite such stand and ground taken by the petitioner, by way of the impugned order dated 20.08.2020, the Executive Magistrate/Tehsildar Sub Division, Alipur, Delhi, had issued an eviction notice directing the petitioners to vacate the said property within 48 hours. Subsequently, *vide* the order dated 22.08.2020, the Executive Magistrate had directed handing over the physical possession of the said property.

9. It is against this order that the petitioner had filed the present petition.

10. It is submitted by Mr. Rana, learned counsel appearing for the petitioners, that this Court had granted stay on the issue that while under the order dated 01.02.2019 the Revenue Assistant had declared that the said land would not fall within the provisions of DLR Act, 1954, however, at the same time under the eviction notice dated 20.08.2020 and 22.08.2020, the Executive Magistrate in powers under DLR Act, 1954, had directed eviction which was contrary to the earlier Dismissal Order dated 01.02.2019, passed by Revenue Assistant.

11. Learned counsel for the petitioners submits that since the petitioner has already filed a civil suit, it is the Civil Court which would decide the entitlement of the petitioner *qua* the subject land as opposed to the private respondents in the present case. He however submits that once the authority had already decided that there is no jurisdiction available or left with the revenue authorities, having regard to the fact that the subject land has become a part of the Extended Lal Dora after the consolidation proceedings, the subsequent impugned orders could



not have been passed and would be *non est* in law.

12. This Court has heard the arguments of learned counsel for the petitioners as also learned counsel for the respondents.

13. So far as the issue in respect of the core dispute is concerned, since the suit has already been filed, the Civil Courts having competent jurisdiction would decide the *lis* necessarily and this Court need not make any observation on such facts.

14. It is clear from the order dated 01.02.2019 that the then Revenue Assistant was clear that the subject land would fall within the Extended Lal Dora of the village *abadi* and as such the provisions of DLR Act, 1954 would not apply. This was the edifice upon which the petition of the petitioner under section 85 of DLR Act, 1954 was also dismissed. Subsequent thereto, the petitioner was constrained to file a civil suit which is still pending adjudication. So far as the aspect that the subject land falls within the Extended Lal Dora and as such provisions of DLR Act, 1954, would not apply is concerned, the same is also not disputed even by the private respondents.

15. Ms. Hetu Arora Sethi, learned counsel appearing for the respondents no.2 and 3 submits that the petitioner is mixing two different orders to mislead this Court. She submits that the order dated 01.02.2019 was passed by the Revenue Assistant while considering a petition filed under section 85 of the DLR Act, 1954, whereas the eviction notice dated 05.08.2020 and eviction orders dated 20.08.2020 and 22.08.2020 issued by respondents no.2 and 3 was in exercise of the powers under The East Punjab Holdings (Consolidation and Prevention



of Fragmentation), Act, 1948 (in short 'EPH Act'). In that view of the matter, Ms. Sethi submits that these are two different proceedings and the submissions of the petitioner that these orders should be set aside on the strength of the order dated 01.02.2019 may not be entirely correct. In furtherance of such submissions, Ms. Sethi, had read out and emphasized on the paragraphs of the Counter Affidavit filed on behalf of respondent nos.2 and 3. The same are extracted hereunder:-

"4. That it is pertinent to mention that the Petitioner has submitted that he has purchased the land in question i.e. 14/8 from Bhiman etc. S/o Ganga Das by way of Sale Deed in the year 1989 but the same land could not be mutated by the Petitioner in revenue record. The Consolidation proceedings U/s 21(1) re-partition started from 21.03.2000 to 10.04.2000 in Village Nangli Poona. The Khasra No. 14/8 comes in extended Lal Dora Abadi of this Village. Prior to consolidation the land in question was vested in Gram Sabha, the owner of land change the land use from agriculture to non agriculture by way of construction over the agriculture land, hence the land was vested in Gram Sabha through violation of U/s 81 of DLR Act 1954.

5. During the consolidation process the land bearing Khasra No. 14/8 become Khasra 53/21/1 and 53/26/2 in Extended Lal of the Village Nangli Poona and allotted to Respondent No.4 etc.

6. That an appeal filed by the Petitioner U/s 85 of DLR act 1954 for declaration of the Bhumidhari right over the land Khasra No. 14/8 while he was not the recorded owner of land prior to consolidation. Hence the appeal was dismissed because the Petitioners have no locus-standi over the land.

7. That as per present Record of Right Sh. Ved Ram etc. are recorded owner of land bearing Khasra No. 53/25 and 53/26 of Village Nangli Poona, Delhi.

8. The answering Respondent submitted that in view of Section 22, 23 and 24 of the East Punjabi Holdings Act, 1948, it is the duty of consolidation staff to maintain the record of right for allotment and to put onto physical possession of the said right holder upon the allotted land. As per the provision of said sections, the Consolidation officer is duty bound to maintain records properly and to hand over the physical possession of the allotted plots to the allottees. It is submitted that the record of



allotment was properly maintained by Consolidation Staff for the said allotted plots as per abovementioned provisions, but the allottees were not put into physical possession of the said allotted plots by Consolidation Officer due to pendency of the Petition for declaration of bhumidari rights. Section 23 (2) of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 is reproduced as under:

“(2) If all the owners and tenants as aforesaid do not agree to enter into possession under sub-section (1) they shall be entitled to possession of the holdings and tenancies allotted to them from such date as may be determined by the Consolidation Officer and published in the prescribed manner in the estate or estates concerned; and the Consolidation Officer shall if necessary, put them in physical possession of the holding to which they are so entitled, including standing crops, if any and for doing so may exercise the powers of a Revenue Officer under the Delhi Land Revenue Act, 1954, or the U.P. Land Revenue Act, 1901, as in force in the Union Territory of Delhi, as the case may be.]”

16. On a query put by this Court, as to whether under the EPH Act, 1948, the officers could exercise jurisdiction over Extended Lal Dora area, Ms. Sethi is unable to show any provision empowering officers under EPH Act, 1948, to exercise any such jurisdiction. In absence whereof it is not possible to appreciate this argument.

17. That apart, another consideration would be that the said Village Nangli Poona has been specifically notified as *Urbanized Area* by virtue of the Notification under Section 507(a) of Delhi Municipal Corporation Act, 1957, dated 16.05.2017, whereby the said village is listed at serial No.40. This Notification read with the ratio of the Hon’ble Supreme Court in ***Mohinder Singh (Dead) Through LRs and Another vs. Narain Singh and Others*** reported in **2023 SCC Online SC 261**, would lead to the conclusion that the said area is an Urban Area and as such the



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DLR Act, 1954, in any case, would be inapplicable. It is equally doubtful as to whether the Authorities under EPH Act, 1948, could exercise any jurisdiction at all. Moreover, the petitioner has already approached Civil Court for appropriate remedies in accordance with law and has also arrayed the private respondents including the Gaon Sabha as defendants before the Civil Court.

18. In that view of the matter, the petition is allowed. The impugned eviction notice dated 05.08.2020 and orders dated 20.08.2020 and 22.08.2020 are hereby quashed and set aside.

19. It is made clear that there is no observation made in the present petition *qua* the stand taken by the said respondents and rights of the parties are kept reserved before the Civil Court to be decided in accordance with law.

20. In view of the above, the writ petition, alongwith pending application, is disposed of with the aforesaid directions.

TUSHAR RAO GEDELA, J.

APRIL 2, 2024/ns