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

\+ W.P.(C) 890/2017

NAMITA DABAS AND ORS .....Petitioners
Through: Mr. Anand Yadav, Advocate.

versus

A D M (NOTIFICATION) AND ANR .....Respondents
Through: Mr. Sanjay Kumar Pathak, Standing Counsel with Mr. Sunil Kumar Jha, Mr. M.S.Akhtar, Ms. Musarrat Benazeer Hashmi and Mr. Mayank Madhu, Advocates for Respondent No.1.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% **11.09.2024**

1. This writ petition has been preferred on behalf of the Petitioners under Article 226 of the Constitution of India, seeking the following reliefs:

> *"(a) quash and set aside Status Report No. DC North West /NOC/10876 dated 21/12/2016 submitted by ADM(Notification) District North West, Respondent No.1 to the respondent no.2, to the extent that Status Report is not recommended and that there is violation of section 74(4) of Delhi Land Reforms Act, 1954 in view of report of sub-division.*
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> *(b) direct the Respondent No. 2 to register the sale deed presented by petitioners on 26.09.2016 in office of Sub-Registrar VID, Respondent No.2, in Addl. Book No. I in respect of Khasra No. 76/7 min. (2-04), 76/14 min. (2-08) and khasra no. 48/25 min. (4-05) situated in the revenue estate of Village Kanjhawala, Delhi and release the same to the Petitioners;"*

2. Facts to the extent necessary and relevant are that Gaon Sabha Village Kanjhawala allotted land under Section 74(4) of Delhi Land Reforms Act, 1954 ('1954 Act') to various persons in 1970 including one Shri Uday Singh S/o Shri Himmat. Shri Jit Ram and others challenged the said allotment in

W.P.(C) No. 1853/1980 in 1980 and vide order dated 16.04.1982, this Court directed the Deputy Commissioner to conduct an inquiry as to the eligibility of the allotees being admitted as Asamis on the date of such allotment and as per the report submitted by the Deputy Commissioner, 101 persons including Shri Uday Singh were eligible.

3. It is averred in the petition that on 28.03.1984, Revenue Assistant declared the said 101 persons as Bhumidars and their names were mutated in the revenue record. Notification dated 08.09.1993 was issued by the Government under Section 14 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 ('1948 Act') for consolidation of holdings in Village Kanjhawala. Repartition of lands was carried out under Section 21 of 1948 Act between 05.05.1998 to 29.05.1998. Pre-consolidation land of Uday Singh came inside the phirni and he was entitled for allotment of land ad-measuring 13 Bighas 12 Biswas and was allotted residential plot, industrial plot and agricultural land in lieu of his pre-consolidation land.

4. It is further averred that Uday Singh died in 2004 and after his death land was mutated in the name of Shri Inderjeet Suri/Petitioner No.5 on 31.07.2007 by the Competent Authority under a Will left behind by Uday Singh. Inderjeet Suri sold plot no.143/981 (0-6) in 2014 to Ms. Sunita Garg and the same was mutated in her name on 11.12.2014. He also sold residential plot no.142/812 (2-02) in 2015 to Shri Ajay Kumar and the same was mutated in his name on 20.04.2015 in the revenue records.

5. It is stated that on 27.05.2016, Shri Inderjeet Suri agreed to sell land ad-measuring 8 Bigha 17 Biswa comprised in Khasra No. 76/7 min. (2-04) simple, 76/14 min. (2-08) simple and Khasra No. 48/25 min. (4-05) simple

(hereinafter referred to as 'subject land') to Petitioners No.1 to 4 and therefore, Petitioners filed their statements before Respondent No. 2 to ensure that there is no contravention of Section 8 of Delhi Lands (Restrictions on Transfer) Act, 1972 ('1972 Act'). Petitioners No. 1 to 4 purchased the stamp paper for execution of the sale deed and certificate was issued on 27.05.2016. On 04.07.2016, ADM (Notification)/Respondent No.1 issued a status report stating that the land was not notified under Sections 4, 6 and 11 of Land Acquisition Act, 1894 ('1894 Act') and that there was violation of Section 74(4) of 1954 Act and thus he did not recommend in favour of the Petitioners. On 05.08.2016, Petitioners filed W.P.(C) No. 6945/2016 aggrieved by report of the ADM and action of Sub-Registrar-VID/Respondent No. 2, refusing to register the sale deed, which was disposed of on 08.08.2016 directing the Sub-Registrar to pass a speaking order with respect to the sale deed when presented before him.

6. It is averred that Petitioners presented the sale deed dated 26.09.2016 before Respondent No.2 and made payment of registration fee vide receipt No. 5743. Deficiency memo dated 07.10.2016 was issued by Respondent No.2 requiring the Petitioners to submit Acquisition/Land Status Report from the Competent Authority. On 18.10.2016, Petitioners submitted the requisite statement ensuring non-contravention of Section 8 of 1972 Act. However, another deficiency memo was issued on 20.12.2016 on account of there being no Acquisition/Land Status Report. On 20.01.2017, Petitioners received information that Respondent No. 1 vide his report dated 21.12.2016 had not recommended the grant of status report on the ground that there was violation of Section 74(4) of 1954 Act, despite stating in the same report that land was not notified under Sections 4, 6 and 11 of 1894 Act. Aggrieved by

non-registration of the sale deed presented by the Petitioners on 26.09.2016 in the office of Respondent No. 2, Petitioners filed the present petition.

7. Mr. Yadav, learned counsel for the Petitioners submits that the Land Status Report is required in view of the provisions of 1972 Act but if the land is not notified then the provisions of the said Act are inapplicable and no permission is required under Sections 4 and 5 of 1972 Act and Respondent No. 2 is bound to register the sale deed and in this context relies on judgments of this Court in ***O. P. C. Jain v. A.D.M. (LA) & Ors, 1990 SCC OnLine Del 260*** and ***M/s Ritu Mercantiles Pvt. Ltd. & Anr. v. Leelawati 2013 SCC OnLine Del 2014***.

8. It is further argued that provisions of Section 74(4) 1954 Act are not violated, as alleged by the Respondents. Once an Asami under Section 74 is declared a Bhumidar then his rights are governed by the provisions of the said Act and as per Section 5 thereof, every person who is a Bhumidar shall have all rights and be subject to all liabilities. Section 31 of 1954 Act provides that interest of Bhumidar is transferable and as per Section 48, a Bhumidar has the right to bequeath his holdings. Shri Uday Singh falls under Section 5(c) of 1954 Act and he had every right to transfer or bequeath the land and similar rights passed on to Shri Inderjeet Suri on transfer to him. This issue according to Mr. Yadav is no longer *res integra* and he places reliance on the judgment of this Court in ***Shri Romesh Bhardwaj v. Lt. Governor of Delhi & Ors.*** in ***W.P.(C) No.8862/2003*** decided on ***29.04.2004***; ***Lt. Governor of Delhi & Ors. v. Romesh Bhardwaj*** in ***LPA No.1050/2004*** decided on ***02.05.2005*** and ***Shri Ram Lal & Ors v. Government of NCT & Ors.*** in ***W.P.(C) Nos.12310-12312/2005*** decided on ***12.11.2007***.

9. It is also argued that one Shri Jai Singh had challenged the allotment during consolidation proceedings to a person similarly placed as Shri Uday Singh and the petition was dismissed by the Financial Commissioner vide order dated 02.01.2007 in *Case No.39/2001-CA, Shri Jai Singh & Ors v. The Consolidation Officer & Ors*. Shri Jai Singh filed a writ petition against the said order which was dismissed by this Court on 09.11.2009 in *WP(C) No. 12999/2009, Jai Singh and Ors. v. Government of NCT of Delhi and Ors.* and a differential treatment cannot be meted out to the Petitioners. It is also urged that after this writ petition was filed, Village Kanjhawala has been declared as an urban area by a Notification under Section 507(a) of Delhi Municipal Corporation Act, 1957 ('DMC Act') and therefore provisions of 1954 Act have ceased to apply even otherwise, as held by the Supreme Court in ***Mohinder Singh (Dead) Through Lrs and Another v. Narain Singh and Others, 2023 SCC OnLine SC 261.*** Last but not the least, it is argued that the only other objection of the Respondents with respect to restrictions in Section 33 of 1954 Act cannot be sustained in view of the judgment of this Court in ***Karan Luthra v. Govt. of NCT of Delhi Through its Secretary and Others, 2024 SCC OnLine Del 1774,*** where the Court has held that if no restriction or a condition for transfer is stipulated in the transfer document/allotment letter, no restriction or fretter can be foisted upon a Bhumidar and refusal of NOC cannot be countenanced. In the same context, reliance is placed on an order dated 12.12.2005 passed by this Court in ***M/s New Age Polypack Coats Pvt. Ltd. v. S.D.M HQ & Others*** in ***W.P. (C) 22759/2005.***

10. Mr. Pathak, learned Standing Counsel appearing on behalf of the Respondents fairly concedes that the primordial objection against

registration of the sale deed was the restriction under Section 33 of 1954 Act, however, in view of the judgment in ***Karan Luthra (supra),*** this objection is no longer tenable.

11. Having heard learned counsels for the parties and in view of the judgments referred to above, this Court finds merit in the contentions raised by the Petitioners. Undisputed facts are that late Shri Uday Singh was allotted 13 Bigha 12 Biswa of land which included residential/industrial/agricultural plots in lieu of his pre-consolidation land. After his death, the land was mutated in favour of Shri Inderjeet Suri on 31.07.2007 by virtue of a Will executed in his favour by late Shri Uday Singh. Shri Inderjeet Suri agreed to sell the subject land to Petitioners No. 1 to 4, who applied for execution of the sale deed but the Sub-Registrar has declined to register the same on account of deficiency memos issued on 07.10.2016 and 20.12.2016 by Respondent No. 2 pointing out the failure of the Petitioners to furnish Acquisition/Land Status Report/NOC from the Competent Authority. It is also undisputed that Respondent No. 1 has issued a status report on 04.07.2016 stating that subject land is not notified under Sections 4, 6 and 11 of 1894 Act. It is not the case of the Respondents that there are any restrictions/conditions/fetters on land transfer in any document under which land has been transferred to the Petitioners of which registration is sought.

12. Mr. Yadav rightly contends that in ***O.P.C. Jain (supra)*** and ***Ritu Mercantile (supra),*** this Court has held that if there is no Notification under Sections 4 and 6 of 1894 Act, then no permission or NOC is required in case of transfer/sale of land and provisions of 1972 Act will be inapplicable to such land. Insofar as the objection of Section 33 of 1954 Act is concerned,

the issue stands decided by this Court in ***Karan Luthra (supra)*** and relevant paragraphs which capture the contentions of the Petitioner/Respondents therein and the findings of the Court are extracted hereunder, for ease of reference:-

> *"5. Learned Senior Counsel submits that such refusal is contrary to the law as settled by this Court in the judgment of U.S. Mishra v. Govt. of NCT of Delhi, 2021 SCC OnLine Del 5323. According to learned Senior Counsel, this Court while considering the restrictions in Section 33 of the DLR Act had juxtaposed the provisions of Section 31 to conclude that if there is no restriction or a condition for transfer mentioned in the order/allotment letter, the objections for refusal of NOC cannot be countenanced. To buttress the aforesaid argument, learned Senior Counsel refers to the Status Report of Tehsil (Mehrauli) in respect of Village Dera Mandi, Application No. 90580000006341 dated 24.11.2022, which is on record. He points out to the Column XI regarding if there is any violation of Section 33 of the DLR Act, the remarks column was in the negative. Same is the situation with Column IX in regard to violation of Section 81 of the DLR Act. It is only the Column X regarding whether the subject land falls under Section 74(4) of the DLR Act that the Revenue Authorities remarked in the affirmative. He further referred to the reports appended thereto of the Kanungo, Reader to the SDM, to submit that apart from the reference to the sale deed of 1998 registered in Mumbai in favour of M/s. Krishna Estate and others, there was no reference to the compromise decree passed by the learned Civil Court in favour of the petitioner.*
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> *12. According to the learned Standing Counsel, this Court needs to consider the dispute in view of the provisions of Article 46 of the Constitution of India. He particularly draws attention of this Court to para Nos. 6, 8, 10 and 11 of the counter affidavit filed on behalf of respondent No. 2, to submit that the subject lands are the assigned lands allotted by the State to landless, downtrodden and poor people of the society for their social upliftment and economic empowerment. He submits that the intention behind such allotment was to implement the policy of economic empowerment to do economic justice and assign lands to such persons to uplift them and to merge their economic status with the mainstream economic development of the country, as a whole. According to the learned Standing Counsel, the allotment of material resource of the country to the weaker sections was not for the purpose of permitting them to sell and come back on the roads again but to retain such allotment of land for generations, with an aim to augment their economic status. He submits that the lands which have been sold or sought to be sold are*

assigned lands belonging to the Government, and as such, the respondent No. 2 is under a constitutional obligation to ensure that no such land is permitted to be sold contrary to the laudable provisions of Article 46 of the Constitution of India. In order to support his contentions, he relies upon the judgment of the Supreme Court in Muralidhar Dayandeo kesekar v. Vishwanath Pandu Barde, 1995 Supp (2) SCC 549 : JT (1995) 3 SC 563, wherein it was held that assigned lands cannot be permitted to be sold or converted to non-agricultural use.

13. He submits that it is not disputed by the petitioner that these lands were assigned to the original asami under the provisions of Section 74 of the DLR Act and despite the fact that the asamis were granted bhumidhari rights under the provisions of Section 74 of the said Act, such sales were not only restricted but were actually prohibited. He submits that the contention of learned Senior Counsel that the order dated 24.06.1985 of the Revenue Assistant under Section 74(4) of the said Act, not containing any restrictions or fretters for further transfer of lands, would be inconsequential having regard to the nature of such grant. According to the learned Standing Counsel, such prohibition is inherent in the provisions of Section 74 of the said Act itself and even if an order passed under such provisions, does not contain written restriction, this Court would necessarily read such prohibition into the said order. Read as such, according to the learned Standing Counsel, the impugned rejection was well within the right authority and jurisdiction of the respondent No. 2. Learned Standing Counsel relies upon the judgment of the Supreme Court in State of Maharashtra v. Digambar, (1995) 4 SCC 683.

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20. In the aforesaid context, after examining the various provisions, which are relevant, it appears to this Court that there are restrictions in place regarding transfer of lands by the bhumidhars, however, there is no provision completely prohibiting such transfers. The same is manifest from reading Section 31, which permits transfer of interest of bhumidhar, subject to certain conditions. Those conditions are stipulated in Section 33 of the DLR Act. This Court is fortified in its view by the ratio laid down by the Co-ordinate Bench of this Court in U.S. Mishra (supra). The relevant para of the same is extracted hereunder:—

> *"6. The Court notes that while further provisions regulating the creation of mortgages, letting of land, lease or exchange stand incorporated, restrictions on transfer stands controlled solely by Section 33. At least learned counsel for the respondents could not draw the attention of the Court to any other provision under the 1954 Act which may have placed a restriction on transfer. The Court notes that the respondents, even otherwise, do not place the refusal NOC on the ground that any of the restrictions contemplated under Section 33*

would stand attracted. Consequently, the Court finds itself unable to sustain the objection as taken by the respondents herein.

7. The reliance placed by the respondents on the decision of the Supreme Court in Murlidhar Dayandeo Kesekar v. Vishnu Pandu Barde2 is clearly misconceived. Murlidhar was dealing with a challenge to the restriction imposed upon members of the SC/ST communities and landless persons from transferring land allotted to them under beneficial statutory provisions. The constitutional validity of those restrictions was upheld. It was, however, observed in paragraph 22 of the report that the question which would have to be answered in such situations would be "whether such alienation is void under any law or violates provisions of the Constitution and whether permission could be legitimately given". The respondents have woefully failed to prove that the proposed alienation would be in violation of any provision of the 1954 Act. That the same is a valid piece of legislation is also not disputed. A legitimate reason to refuse, undisputedly, must be founded in law."

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25. Equally notable is a fact that there is no reference to the earlier LSR/NOC of the year 1987 for the very same subject lands. This error by the respondent No. 2 would be pivotal to the outcome of the present case. In that, once a particular parcel of land has already been issued LSR/NOC by the respondent No. 2 way back in the year 1987 when the lands were actually agricultural in nature, then in the year 2022 when applications were made in respect of the subject lands, the respondent No. 2 was obligated only to consider whether in the interregnum, any notification under the LA Act had been issued or the lands were actually acquired. However, there is no reference to the earlier LSR/NOC of the year 1987 at all in the Tehsildar's Report. So far as the provisions of LA Act or Land Restriction Act is concerned, learned Standing Counsel for respondent No. 2 had fairly conceded that there are no such acquisition proceedings pending or acquisition proposed in respect of the subject lands.

26. At this juncture, it would also be relevant to consider the fact that in the order passed by the Revenue Assistant on 24.06.1985, neither any restrictions or fretters were foisted upon the then bhumidhars nor have the respondents been able to demonstrate or establish to the contrary. In the absence whereof, it is well nigh impossible for this Court to conclude that any provision of DLR Act would create an impediment to seeking LSR/NOC in respect of the subject lands.

27. Having regard to the aforesaid factual conspectus and uncontroverted position, this Court fails to see as to on what grounds the respondent No. 2 could resist issuance of LSR/NOC.

28. This Court would now proceed to also consider the dispute from the point of view of the respondent No. 2. Learned Standing Counsel had vehemently predicated his arguments on the violation of provisions of Article 46 of the Constitution and supported the same by reference to the assignment of subject lands under the 20 Point Programme by the Government to landless persons. The object behind Article 46 is undoubtedly laudable and for the economic upliftment and societal amelioration of the poor and landless citizens of India. However, from the documents on record, it appears that grant of status of bhumidhar on the individual asami in the year 1985 and subsequent transfer of interest by the original bhumidhars to Mr. Vinod Luthra in the year 1987 was within the provisions of DLR Act. In other words, the exercise of power for grant of LSR/NOC was under a law valid as per the Constitution of India. Coupled with the fact that it was the very same respondent No. 2 which is stated to have issued LSR/NOC in the year 1987 to such bhumidhars to effect registered sale deeds in favour of brother of the petitioner. As such, the objections raised by learned Standing Counsel on the anvil of Article 46 of the Constitution of India, does not appear to be legally tenable.

29. That apart, this Court sees no reason, much less any cogent reason as to why and on what grounds the petitioner has been refused LSR/NOC particularly, when the very same respondent No. 2 had actually granted LSR/NOC in respect of another parcel of land belonging to the petitioner pertaining to the very same Village Dera Mandi. This is not to say that the respondent No. 2 does not have any legal obligation to comply with the requirements of law. It is of course the obligation of the respondent No. 2 to consider all such applications, however, the same needs to be exercised in a more judicious manner. The same cannot be mechanical, more so, in situations like the present case.

30. It is also relevant to note that the Village Dera Mandi was urbanized vide the Notification dated 20.11.2019 under Section 507(a) of the DMC Act. There is no doubt that from the time the notification is effected, the provisions of the DLR Act would cease to apply to such urbanized areas, this read with the ratio laid down by the Supreme Court in Mohinder Singh (Supra), makes it amply clear that the Revenue Authorities do not have any jurisdiction over such lands. What is to be kept in mind is the fact that the objection has not been raised by the Revenue Authorities but by the respondent No. 2 - LAC. Even the respondent No. 2 has denied the permission of LSR/NOC on the basis that there is an objection under Section 74(4) of the DLR Act. There is nothing on record to show as to what objection in respect of the subject lands is within the purview of Section 74(4) of the DLR Act. In the absence of any cogent or relevant material on record, this Court is unable to appreciate the objections in this regard."

13. As noted above, in the absence of any restriction/fetter in the document transferring the land to the Petitioners, Respondent No. 2 cannot insist on a No Objection from the Petitioners. There is yet another reason why the impugned action of Respondent No. 2 cannot be sustained at this stage. It is to be noted that Village Kanjhawala has been urbanised vide Notification dated 16.05.2017 under Section 507(a) of DMC Act and there is no doubt that from the date the Notification has taken effect, provisions of 1954 Act would cease to apply to the said village and consequently the subject land in view of the judgment of the Supreme Court in ***Mohinder Singh (supra)*** and judgment of this Court ***Smt. Indu Khorana v. Gram Sabha & Ors, 2010 SCC OnLine Del 1334*** and therefore, Revenue Authorities have no jurisdiction over the subject land.

14. Accordingly, this writ petition is allowed and Respondent No. 2 is directed to register the sale deed presented by the Petitioners in the office of Respondent No. 2 subject to completion of necessary formalities and modalities in this regard. The entire exercise shall be completed within a maximum period of 3 months from the date of receipt of this order.

15. Writ petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

SEPTEMBER 11, 2024/*DU/shivam*