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

% Judgment delivered on: 07.03.2024

+ **W.P.(C) 14615/2023 & CM APPL. 58134/2023****SH SHAMSHER SINGH**

..... Petitioner

versus

DIRECTOR OF PANCHAYAT & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. S.K. Kashyap, Advocate.

For the Respondents : Mr. Shiven Varma, Panel Counsel for R-1, R-2 and R-6.

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]**

1. This is a petition under Article 226 of the Constitution of India, 1950 seeking setting aside of the order dated 09.09.2011 passed by the Additional Collector, North West District, Kanjhawala, Delhi-81 in Appeal No. 10/DC/NW/2005 titled as "*Shamsher Singh vs. Director of Panchayat and Ors.*" and order dated 19.04.1983 passed by the SDM - Sh. C.P. Tripathi, (Revenue Assistant, Kingsway Camp) Delhi in the case titled as "*Anant Ram vs. Gaon Sabha Nangli Poona*".

2. The petitioner's case is that by way of an allotment letter dated 22.11.1976, the Gram Sabha Nangli Poona had granted the subject land in khasra No. 30/2016 ad-measuring 4 bigha 16 biswa of Village Nagli



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Poona, Delhi in the name of his late father – Sh. Meer Singh.

3. The further case of the petitioner is that by the third resolution dated 26.04.1982, the Gram Sabha Nangli Poona confirmed the allotment, as granted *vide* the allotment letter dated 22.11.1976.

4. On an application filed by one Sh. Hari Chand, the then SDM in case No. 135/RA/82 had wrongly declared the said Sh. Hari Chand as bhumidar on 19.04.1983.

5. On 31.07.2004, the petitioner sought to move an application for mutation of the land in khasra No. 30/2016 measuring 14 bigha 16 biswa in Village Nangli Poona in his name before the Office of Tehsildar Alipur, Delhi.

6. On 05.02.2005, the office of the SDM Narela issued a letter/notice to the petitioner directing him to file an appeal in the Court of the Collector (North West, Kanjhawala) against the order dated 19.04.1983 passed by the SDM/ Revenue Assistant.

7. The petitioner had filed complaints before the Public Grievance Cell and since no action was undertaken had filed an appeal before the Additional Collector, North West, bearing Appeal No. 10/DC/NW/2005. *Vide* the impugned order dated 09.09.2011, the Appellate Authority after perusing the entire facts as obtaining before it and finding that the name of the appellant's father was not found on revenue records, had dismissed the same. Thereafter, the Appellate Authority also dismissed the appeal on the grounds of limitation for having challenged the order passed on 19.04.1983 after a gap of 22 years. Assailing the said Appellate order, the petitioner went on an appeal under Section 66 of the DLR Act, 1954 before the Financial Commissioner.



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8. The Financial Commissioner, after noting facts, had significantly noted that *vide* the Notification dated 16.05.2017 under Section 507 (a) of the DMC Act, 1957, the lands pertaining to Village Nangli Poona were urbanized and read with the judgment of the Supreme Court in ***Mohinder Singh (Dead) through LRs and Another vs. Narain Singh and Others*** reported as **2023 SCC OnLine SC 261**, had concluded that the Revenue Authorities do not have any jurisdiction to decide the dispute. Simultaneously, the Financial Commissioner had rejected the said appeal and granted protection of sixty day to enable the parties to approach the appropriate forum for redressal of their grievances and had directed that no third party interest shall be created. The said order was passed on 31.08.2023.

9. Learned counsel appearing for the petitioner submits that having regard to the aforesaid, the dismissal of the appeal filed by the petitioner, *vide* the impugned order dated 09.09.2011 by the First Appellate Authority would be incorrect and this Court should interfere in the said order.

10. This Court has heard the arguments of the learned counsel for the parties and also perused the contents of the present petition as also the various documents placed on record, the records of the years 1976 to 1981 do indicate that a certificate was issued in the name of late Sh. Meer Singh in respect of a land measuring 4 bigha and 16 biswa in khasra No. 30/2016 for agriculture purposes for five years @ Rs.25/- per annum as malgujari for the years 1976 to 1981.

11. However, what has transpired is that one Sh. Hari Chand, appears to have filed proceedings before the Revenue Assistant claiming



bhumidari rights over the said parcel of land.

12. The said issue would be clear from the impugned judgment dated 09.09.2011, which is extracted hereunder :-

“This order shall dispose off the above said appeal.

The appellant has stated that his father, the deceased Meer Singh sone of Mam Chand had been allotted agricultural land bearing khasra No. 30/16 (4-12) in Village Nagli Poona, Delhi in the year 1976-77 under 20 Points Programme being landless Harijan of the village. The name of Meer Singh mentioned in the resolution at serial No. 27. The father of the appellant had continuously cultivating the land regularly and got the output from the land in question. The deceased, father of the appellant got cultivated Rabi and Kharif crops years to year respectively and regularly. Patwari concerned in collusion with Hari Chand and his henchmen did not fill up the khasra Girdawari and this fact came to knowledge of the appellant when he attained the age of majority and after coming to know this fact the appellant rushed to Tehsildar and other Revenue Department and came to know that Hari Chand under of appellant had got illegal declaration of bhumidari with the collusion of other persons namely Chandgi, Het Ram, Dhani Ram and Jage Ram etc. as well as Ananti Ram son of Shri Natholi. The above said declaration order was obtained arbitrarily, excessively, mischievously and malafide. The appellant further stated that the necessary representation was made by the appellant to Smt. Shailaja Chandra Chairman Public Grievance Commission and other respective head in the department as well as to the office of Director respective head in the department as well as to the office of Director Panchayat, Lt. Governor, Divisional Commissioner, DC (North-West) in regard to illegal and unlawful involvement of the land mafia with the collusion of Revenue Officer. The appellant further stated that he was minor and after attaining the age of majority and after getting higher education and service in the Defence Ministry could not file the proper appeal before Hon'ble Court and the application for condonation of delay has been filed and prayed for setting aside the order dated 19/04/1983.

On the other hand the respondent No.3 and 4 have filed their reply and taken preliminary objections stating therein that the appellant has no locus standi to file the present appeal against the order dated 19/04/1983 as he has no right, title or interest in the land in question against which the present appeal has filed. The



respondents further stated that the appeal is liable to be dismissed in view of section 96 (4) CPC as well as under order XLI(1) of CPC. The respondents further stated that the appeal is barred by limitation as the order was passed on twenty years ago and the appellant is a stranger to the proceedings decided by the competent court of law twenty year ago and the same is not maintainable under the law. The respondents further stated that the appeal is bad for nonjoinder of necessary parties as the village is under consideration. The appeal is not maintainable because all LRs. Of Hari Chand have not been made parties. The respondent further stated that the appeal is liable to be dismissed as the father of the appellant Meer Singh was never allotted land in question at any point of time and there was no resolution in his favour as mentioned in the appeal and revenue record does not contain any entry in the name of Meer Singh. The ground in the appeal are absolutely false, frivolous, untenable and vague. The respondents further stated that the appeal is not maintainable as the land in question was allotted in the name of Hari Chand and he was declared bhumidar of khasra No. 30/16 min (4-12), in village Siras Pur, Delhi. Meer Singh during his life time, father the appellant, never challenged the bhumidari rights granted in favour of Hari Chand, father of the respondent No.4. Sh. Hari Chand had been declared Bhumidar by the competent court of law after adducing the evidence by village Pardhan and other persons in favour of Hari Chand.

I have heard the arguments at length and perused the material available on the record. It is admitted fact that the land in question had been allotted by the Gaon Sabha by passing a resolution in the name of Hari Chand and petition U/s 73/74 of D.L.R. Act was filed by the father of the respondent No. 4 for declaration of bhumidari right in respect of khasra No. 30/16 min (4-12) situated in village Nagli Poona, Delhi. It is also admitted fact that the name of father of the appellant does not mention in the revenue record and even in the order dated 19/04/1993 of the then RA/SDM Sh. C.P. Tripathi, vide which declaration of bhumidar had been made. It is further clarified that the appellant has no locus standi to file the present appeal as he has no right, title or interest in the land in question. Moreover, the order was passed on 19/04/1983 and the present appeal has been filed after a gap of 22 years and no sufficient reason has been mentioned for condonation of delay in filing the appeal. The appellant failed to place on record as to why his father did not challenge the order dated 19/04/1983 during his life time, who died on 22/12/1997.

In view of the aforesaid discussion, the appeal of the



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appellant fails and the same is hereby dismissed. Announced in open court on 09/09/2011. ”

13. Since the issues raised in the present petition are clearly on disputed questions of fact, this Court under writ jurisdiction is precluded from considering detailed issues on facts, which are disputed *inter se* parties.

14. It is clear from the perusal of the records that there are conflicting and contesting interests raised by the petitioner, on the one hand and apparently one Sh. Hari Chand, on the other. Moreover, the petitioner has not impleaded either Hari Chand or his Legal Representatives in the present proceedings for some unknown reasons. In the absence of Hari Chand or his LR's too, this Court would be unable to examine the facts.

15. That being the position, the issue of deciding the present *lis* in the present proceedings does not arise. However, at the same time, a party cannot be precluded from seeking redressal in accordance with law.

16. The petitioner had been following up the appeal from a long time concluding in the appeal under Section 66 of the DLR Act, 1954 filed before the Financial Commissioner, which was disposed of on 31.08.2023 alone cannot disentitle the petitioner from seeking further redressal in a Court of competent jurisdiction. Moreover, after the issuance of notification under Section 507(a) of DMC Act urbanizing Village Nangli Poona, and the DLR Act ceasing to apply, cannot be read to have the petitioner without any remedy. This view is fortified by judgment of Co-ordinate Bench of this Court in ***Radiance Fincap P Ltd. Through Its Authorized Representative Shri Mukesh Rana vs. Govt. of NCT of Delhi Department of Revenue*** reported in 2023 SCC OnLine



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17. In that view of the matter, the present petition is dismissed as not maintainable before this Court under Article 226 of the Constitution of India, 1950, however granting all rights under law, as available to the petitioner to take recourse to the remedies available before the Civil Court of competent jurisdiction.

18. The present petition along with pending applications is dismissed as not maintainable, leaving the parties to avail appropriate remedies in accordance with the aforesaid directions.

TUSHAR RAO GEDELA, J.

MARCH 7, 2024/nd