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

\+ W.P.(C) 16124/2024 and CM APPL. 67725/2024

DAYA KISHAN & ORS. .....Petitioners

Through: Mr. V.P. Rana and Ms. Bhawana, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS. .....Respondents

Through: Ms. Rachita Garg, Ms. Preeti and Mr.Agam Rajput, Advocates for Respondents No.1, 2 and 4.

Ms. Manika Tripathy, Standing Counsel with Mr.Barun Dey, Advocates for Respondent No.3/DDA.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% **22.11.2024**

1. This writ petition has been preferred on behalf of the Petitioners seeking setting aside of the order dated 10.12.2013 passed by the Revenue Assistant, Narela/Respondent No.4 as well as order dated 08.08.2023 passed by the Financial Commissioner.

2. Facts to the extent necessary are that Petitioners were allotted land ad measuring 1 Bigha falling in Khasra No. 37/25 (1-0) and 4 Biswa falling in Khasra No. 37/28 (0-4) in Village Bankner (‘subject land’) by Respondent No. 2/Gaon Sabha, Bankner vide Patta Certification dated 19.12.1977 and were admitted as *Asami.* Between 1989 to 1990, Revenue Authorities recorded the names of the Petitioners as *Asami* in *Khasra Girdawari*. Gaon

Sabha, Bankner filed an application on 25.05.1990 before Revenue Assistant/SDM (Narela) under Section 86A of the Delhi Land Reforms Act, 1954 ('1954 Act') seeking ejectment of the Petitioners from the subject land. The Revenue Assistant vide order dated 07.06.1995 rejected the application being barred by limitation and affirmed the status of the Petitioners as *Asami*.

3. It is averred in the writ petition that vide order dated 28.04.1999, Deputy Commissioner (North-West) remanded the matter to Revenue Assistant for fresh adjudication in an appeal filed by the Gaon Sabha against the order dated 07.06.1995. In a writ petition filed by the Petitioners being W.P.(C.) No. 3155/1997, this Court vide order dated 27.09.2001 protected the Petitioners by directing that they will not be dispossessed from the subject land, save and except, in accordance with provisions of the 1954 Act. The order was not assailed by the Gaon Sabha and continues to operate.

4. It is further stated that the Revenue Assistant passed an order on 08.05.2003, striking off the entries showing the Petitioners as *Asami.* This order was set aside by the Financial Commissioner on 10.04.2007 in Case No.132/2003 and directed restoration of entries made earlier in favour of the Petitioners in the revenue records as existing from 1991-1992. Further, by order dated 04.11.2010, the Financial Commissioner directed the Revenue Authorities to implement the order dated 10.04.2007 in a revision petition bearing Case No. 23/2008 filed by the Petitioners. On 10.12.2013, status of the land falling in Khasra Nos. 37/25 and 37/28 was changed to Gaon Sabha land by an order passed by the Revenue Assistant and when this fact came to the knowledge of the Petitioners, on obtaining *Khasra Khatauni* on 09.06.2016, they filed the revision petition being Case No. 189/2016 against

the order dated 10.12.2013 on the ground that the same was without jurisdiction and without any notice or intimation to the Petitioners.

5. Village Bankner was urbanised by a Notification issued on 20.11.2019 under Section 507(a) of the Delhi Municipal Corporation Act, 1957 (‘1957 Act’). Post the Notification and consequent urbanisation of the village in which the subject land is situated, the revision petition was dismissed by the Financial Commissioner vide impugned order dated 08.08.2023 on the ground that he no longer had the jurisdiction to entertain the petition in view of the judgment of the Supreme Court in ***Mohinder Singh (Dead) Through LRs and Another v. Narain Singh and Others, 2023 SCC OnLine SC 261.***

6. Mr. Rana, learned counsel appearing on behalf of the Petitioners assails the order dated 08.08.2023 *inter alia* on the ground that the order is in the teeth of the judgment of the Division Bench of this Court in ***Subnam Gupta (Sabnam Gupta) v. Union of India and Others, 2024 SCC OnLine Del 2759,*** wherein relying on Section 150(3)(d) of 1954 Act, the Court held that where the order impugned in the pending appeal was passed prior to urbanisation of the village in which the subject land is situated, the Appellate Authority will be competent to entertain the appeal and decide the same even after urbanisation. It is urged that in light of this judgment, the Financial Commissioner will have the jurisdiction to entertain the revision petition since the order impugned therein was passed by the Competent Authority on 10.12.2013, which was prior to the urbanization Notification issued on 20.11.2019. It is also argued that in ***Subnam Gupta (supra),*** the Division Bench has observed that the judgment of the Supreme Court in ***Mohinder Singh (supra),*** will not be applicable in a case where the order of

the Competent Authority was passed prior to the Notification as in the case before the Supreme Court, where the Notification urbanising Village Samepur was issued on 23.04.1992, whereas the appellants had challenged the mutation order dated 31.05.1989 by filing an appeal before the Financial Commissioner under Section 64 of the 1954 Act, which appeal was adjudicated on 10.02.1995 and in this context, the Supreme Court held that the proceedings under 1954 Act were *non est* and these facts were different from the case in ***Subnam Gupta (supra),*** where the impugned order of the SDM was passed prior to urbanisation of Village Burari.

7. Mr. Rana, learned counsel for the Petitioners fairly concedes that the impugned order dated 08.08.2023 was passed prior to the judgment in ***Subnam Gupta (supra)*** and therefore prays that the matter be remanded back to the Financial Commissioner for a re-consideration in light of the observations of the Division Bench.

8. Issue notice.

9. Learned counsels, as above, accept notice on behalf of respective Respondents.

10. Having heard learned counsels for the parties and considering the judgment of the Division Bench of this Court in ***Subnam Gupta (supra),*** in my view, there is merit in the contention of the Petitioners that the matter needs re-examination since in the present case, the order impugned in the revision petition, which has been dismissed on 08.08.2023, was passed on 10.12.2013 i.e prior to the urbanisation Notification issued on 20.11.2019.

11. Accordingly at this stage, without entering into merits of the case, this writ petition is disposed of remanding the matter to the Financial Commissioner for re-consideration of the revision petition in light of the

judgment of the Division Bench of this Court in ***Subnam Gupta (supra),*** as also considering the case set up by the respective parties. The revision petition will be decided as expeditiously as possible.

12. As the matter is being remanded back, impugned order dated 08.08.2023 is set aside, making it clear that it will be open to the Financial Commissioner to consider the case on the issue of jurisdiction without being influenced by any observation in this order and depending on the outcome of this decision, to proceed further in accordance with law.

13. Pending application stands disposed of.

JYOTI SINGH, J

NOVEMBER 22, 2024

B.S. Rohella/shivam