

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 110/2012

Review petition under Order 47
Rule 1 Read with Section 151
CPC

In the matter of:

1. Sh. Pirthavi Singh
2. Sh. Kanwar Singh @ Katar Singh
3. Sh. Chandan Singh
4. Sh. Tarif Singh

All sons of Sh. Zile Singh
R/o Village Saffipur, Ranholla
Delhi.

Petitioners

Versus

-Sd-

Gaon Sabha Saffipur R.
Through its Secretary
At Nangloi, Delhi-110041

Respondent

D.M. SPOLIA, FINANCIAL COMMISSIONER

Order dated April 11, 2014.

1. This order shall dispose of the review petition filed by Sh. Pirthavi Singh & Ors. under Order 47 Rule 1 read with Section 151 of CPC seeking review of the order dated February 28, 2012 passed by Ld. Predecessor of this Court in case no. 376/2010—CA titled "Sh. Pirthavi Singh and Ors. Vs. Gaon Sabha Saffipur Ranhola".
2. Brief facts of the case are that on the basis of a report from the Halqa Patwari dated February 26, 2008, that the petitioners had

contravened the provisions of Section 81 of the Delhi Land Reforms Act, 1954 by way of illegal construction on the agricultural land, a conditional order was passed on August 18, 2008 by the RA/SDM (Punjabi Bagh). Thereafter, the petitioners not having complied with the said conditional order dated August 18, 2008, the SDM/RA (Punjabi Bagh) vide order dated July 21, 2010 made the conditional order absolute and vested the land under dispute in the Gaon Sabha. Aggrieved the petitioners filed a revision petition under Section 187 of Delhi Land Reforms Act, 1954 before the Financial Commissioner (Case No. 376/2010—CA titled "Pirthavi Singh & Ors. Vs. Gaon Sabha, Saffipur Ranhola"). Ld. Predecessor of this Court vide order dated February 28, 2012 rejected the revision petition. Operative paragraph of the said order reads thus:

"4. I have gone through the revision petition and also the impugned order. From the order-sheet of the SDM/RA a copy of which has been annexed by the petitioners, there is mention twice of a notice having been issued to the petitioners. The petitioners not being able to prove that the said notices or conditional order had either not been issued or served to them, it has to be concluded that they were indeed noticed by the Court and had opted to stay away from the proceedings. There is no proof on the record in support of their contentions that the notices were neither issued or served. Since they have failed to establish their case, the revision petition is liable to be rejected and it is so ordered."

Now, vide the present petition the petitioners are seeking review of the above said order dated February 28, 2012 of this Court.

3. In the review petition, the petitioners have enclosed certified copies of the entire proceedings under section 81 conducted by SDM/RA (Punjabi Bagh) to bring out the arbitrariness and violation

of the principles of natural justice in conduct of the said proceedings.
The main contention of petitioners in this regard is as under :

- (i) From perusal of order-sheet dated February 26, 2008 of SDM/RA (Punjabi Bagh) it is evident that the Ld. SDM/RA Punjabi Bagh has neither mentioned the reference of any complaint/report with regard to violation of section 81 of Delhi Land Reform Act nor verified the compliance of the provision of Rule 21-A and 21-B of Delhi Land Reform Rules, 1954.
- (ii) The Ld. SDM/RA (Punjabi Bagh) ordered for issuing the LR-48, interim order and conditional order on the very first date i.e. on February 26, 2008 but no next date for hearing in the said case was mentioned/given in the said order. Without any next date of hearing the question of issuing any notice, interim order and conditional order does not arise nor it was issued/served as per record.
- (iii) The conditional order available on record is dated August 18, 2008 which also proves that no conditional order was available on file before the SDM/RA prior to August 18, 2008 and as such any recording with regard to issuing of said order on February 26, 2008 and August 11, 2008 is absolutely wrong and contrary to the record. Also, the next date of hearing mentioned in the conditional order dated August 8, 2008 is November 18,

2008 which was never a date before the Ld. SDM/RA (Punjabi Bagh).

- (iv) It is further evident from the order/s proceedings conducted by the Ld. SDM/RA (Punjabi Bagh) the service report of the notice, interim order and conditional order ordered to be issued by the Ld. SDM/RA (Punjabi Bagh) has not been mentioned in the proceedings nor the respondents ever proceeded ex-parte for their non-appearance, which also proves that no notice, interim order and conditional order was ever issued and served upon the petitioners.
- (v) Further, in the proceedings conducted by the Ld. SDM/RA (Punjabi Bagh) no next date of hearing of the case was ever mentioned/given in any of the orders/proceedings except on one date i.e. August 11, 2008 which also proves the total misconduct of the proceedings and complete violation of the principles of natural justice.
- (vi) The impugned order dated July 21, 2010 and proceedings of the case are contrary to each other. As per impugned order dated July 21, 2010 the conditional order was issued on August 18, 2008 but on the other hand the proceedings suggest that it was issued on earlier dates, when it was not even available and signed as per record available on file. Moreover, there is no

order for issuing conditional order either on August 18, 2008 or thereafter, which prove that no conditional order was ever issued/served upon the petitioners.

(vii) The entire proceedings from February 26, 2008 to July 14, 2010, conducted by the Ld. SDM/RA (Punjabi Bagh) have been written in the handwriting of one person as well as under the signature of one SDM/RA (Punjabi Bagh) but the conditional order dated August 18, 2008 available on record and certified copy of which placed before this Hon'ble Court suggests that it was signed by another SDM/RA, Sh Aashish Mohan, who has never conducted and signed any proceedings of this case and as such it is proved that the proceedings as well as impugned order have not been conducted/passed in accordance with law.

(viii) After July 14, 2010 no proceedings have been conducted in the aforesaid case but the corrigendum dated July 23, 2010 available on record and placed before this Hon'ble Court suggests that the impugned order has been altered without issuing any notice and recording proceedings with regard to certain Khasra nos. on the basis of a Patwari report dated July 21, 2010, which also establishes the arbitrariness and violation of principles of natural justice in the aforesaid case.

- (ix) That in view of the aforesaid contentions/submissions and legal position it is proved that petitioners have never been served with any notice, orders with regard to the proceedings conducted by Ld. SDM/RA (Punjabi Bagh) in their aforesaid case.

4. In its reply, the respondent Gaon Sabha has failed to counter the specific allegations of the petitioners point wise and has simply denied that the proceedings of the lower court were illegal, unlawful and were without service of notice to the petitioners. In its oral arguments also, the Gaon Sabha could not counter any of the allegations of the petitioners with any substantial or convincing submissions.

5. On the other hand, the averments of the petitioners as already mentioned, corroborated by the certified copies of the lower court record clearly shows that the SDM/RA (Punjabi Bagh) has given a complete go-by to the principles of natural justice and no satisfactory opportunity appears to have been given to the petitioners to be heard. Indeed, it is cause for considerable concern that the record of proceedings in the lower court do not suggest that the proceedings were conducted systematically. The ease and felicity with which proceedings are initiated and then allowed to linger, as in this case for nearly two years, as also the compounding factor in this particular case revealed by lackadaisical manner in which the lower court proceedings have been undertaken proves beyond doubt that the proceedings under Section 81 before the RA/SDM (Punjabi Bagh) did not adhere to the principles of fair play

and natural justice. On the other hand, they convey the distinct impression of being arbitrary. I, therefore, allow the review petition. Consequently, the impugned order dated July 21, 2010 of SDM/RA (Punjabi Bagh) vesting the suit land of the petitioners in the Gaon Sabha stands quashed. The petition is disposed of with the above directions.

6. Before parting with the case, I would like to observe that :

- i) Proceedings under Section 81 should be initiated with abundant caution after ensuring there are sufficient grounds for doing the same.
- ii) The conduct of proceedings under Section 81 should adhere to the principles of fair play and natural justice and the record should reflect so.
- iii) The proceedings should also be concluded within a reasonable period of time.

A copy of this order be served on Principal Secretary (Revenue)-cum-Divisional Commissioner for his information and issuing suitable advisory to all Revenue Authorities in this regard.

7. Announced in the open Court.


(D.M. SPOLIA)
Financial Commissioner, Delhi.
April 11, 2014.