

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 17/2010

Revision Petition Under Section 187 of
the Delhi Land Reforms Act, 1954.

In the matter of:-

1. Shri Ajesh Yadav
S/o Sh. Hari Singh
R/o 54, Village Libaspur
Delhi.
2. Shri Mahesh Yadav
S/o Shri Hari Singh
R/o Village Libaspur
Delhi

Petitioners

Versus

1. Gaon Sabha, Nangli Poona
Through B.D.O.
At office of BDO, Alipur
Narela, Delhi.
2. Revenue Assistant
Narela, At office of BDO, Alipur
Delhi.

Respondents

DHARAM PAL, FINANCIAL COMMISSIONER

ORDER dated: 06th January, 2015

1. This order shall dispose of the revision petition filed under section 187 of Delhi Land Reform Act, 1954 (hereinafter referred to as 'DLR Act') filed by Shri Ajesh Yadav against the order dated 14.1.2010 of SDM/RA(Narela).
2. Petitioner in their revision petition has stated :-
 - (i) That the present petitioners are recorded bhumidar of the land bearing Kh. No. 14/19 min (2-02), situated in the revenue estate of Nangli Poona, Delhi.
 - (ii) That the proceedings u/s 81 of DLR Act vide case no. 195/RA/89 in respect of land Kh. No. 14/19(2-19),20(4-16) were initiated against the

previous owner of the land namely Sh. Sant Ram and Mint Ram. During the pendency of the proceedings Sh. Mahesh Yadav became owner of the land comprising in Kh. No. 14/19(0-12), 14/20(0-11), Sh. Sudesh Yadav of the land bearing Kh. No. 14/20(2-00), Sh. Bhup Singh of land bearing Kh. No. 14/19(0-11), 14/20(0-11) and Jasbinder Kaur of land bearing Kh. No. 14/19(1-16), 14/20(0-8). In this way previous owner were left with land measuring 6 biswas out of the Kh. No. 14/19 and 8 biswas out of Kh. 14/20. Revenue Assistant Model Town vide his order dated 31.01.2001 dropped the proceedings in respect of land bearing kh. No. 14/19(0-6), 14/20(0-8) but remaining land was ordered to be vested in Gaon Sabha.

(iii) That the an application under appendix 6 rule 14 was moved before the R.A by the present petitioners in respect of the remaining Kh. Nos.14/19(2-13), 20(4-08) on the ground that they are the purchaser of the land and their names stood recorded in the revenue recorded, and their land could not be vested into the Gaon Sabha without impleading them as a party. Vide order dated 29.01.2001 ex-party order was set aside and the case was fixed for the reply. Reply was filed and in that reply it was contended that the proceedings u/s 81 are barred by the time. The R.A after hearing both the parties dropped the proceedings vide his order dated 09.12.2005 on the ground that proceedings are initiated after the expiry of limitation period.

(iv) That fresh notice under section 81 dated 25.04.2009 were issued to the present petitioners on the basis of report of Halqa Patwari. The present petitioners filed their reply before the R.A and contended that present proceedings are barred by the principle of res-judicatae under section 11 of CPC as issue had already been decided by R.A vide his order dated 09.12.2005. It was submitted in the reply that the proceedings in respect of land in question were finally decided between the same parties by the previous RA Court vide order dated 9.12.2005 on the point of limitation and fresh proceedings in respect of same land were not maintainable.

(v) That since the matter has already been adjudicated between the same parties on the same cause of action, therefore, there cannot be any re-adjudication on the issue. Section 11 of CPC clearly says that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties.

(vi) That the record shows that notice was issued on 25.04.2009 and after that there was no effective hearing in the case till 14.01.2010 and on this date the R.A/SDM without perusing the reply on record and without adverting the same passed the impugned order whereby the petitioners are asked to restore the land for agriculture purposes.

(vii) That the order of trial court is without jurisdiction and trial court has exercised jurisdiction not vested in it in law

3. Petitioner has assailed impugned order dated 14.1.10 passed by RA/SDM Narela in respect of said land bearing Kh. No.14/19 min (2-2) situated within the revenue estate of Village Nangli Poona, Delhi, vide which it was ordered that the said land be converted back into agriculture purposes within three months from the issue of said impugned order and if the respondent(s) do not convert the land back into agriculture use, the respondent shall stand ejected from the above khasra no. and also said land automatically be vested in Gaon Sabha without any further reference of the respondent(s). Said order of RA/SDM was based on the Halqa Patwari report vide which it was reported that an unauthorized construction was being carried out on the said Khasra No. 14/19 min (2-2).

4. Petitioner has further submitted that the proceedings were totally barred by the principle of res judicatae and as per schedule attached with the act, proceedings u/s 81 can be initiated within 3 years and said issue was raised in earlier proceedings in case no. 630/SO/97, 54/SO/98, 195/RA/89 and issue was finally decided vide order dated 09.12.2005. Further once the issue was decided finally between the same parties on same issue by the competent court then said issue cannot be reopened and cannot re-adjudicated again as issues had attained finality. Therefore, the proceedings initiated by the R.A were barred by the principle of res judicatae.

5. Respondent/Gaon Sabha in its reply has submitted that petitioners converted land use by raising fresh construction over the land in question and at the time of inspection of the Halqa Patwari on 8.5.2009 the construction was going on and on the basis of said Halqa report the proceedings under section 81 of the Delhi Land Reforms were rightly initiated in the above case on the fresh cause of action as such question of proceedings barred by limitation and principle of res-judication does not arise at all.

6. I have heard both the parties at length and have gone through the material placed on record. I observe that Halqa Patwari report specifically states that the “construction was going on the said Khasra No. 14/19 min (2-2)”, which means that construction was in progress on the date of visit of Halqa Patwari i.e. on 8.5.2009. This report of Halqa Patwari is not disputed by the petitioners. The Gaon Sabha has cited a judgment of Hon’ble High Court of Delhi delivered in case of Randhir Singh Vs. Financial Commissioner & Anr. in which it was held that

“ejectment of Petitioner from Land—Challenge against—Bar of limitation of 3 years to initiate fresh proceedings—Construction upon subject land and non-agricultural use warranted initiation of fresh proceedings under Section 81 of the

Act—Bar of limitation would not arise—No error apparent on the face of impugned order, requiring intervention of this Court in writ proceedings—Eviction order is sustained—Costs of Rs.10,000/- imposed on petitioner.”

7. In the light of the above cited judgment of Hon'ble High Court of Delhi, I find no merits in the revision petition filed by the Petitioners and the same is hereby dismissed.

8. Announced in the open Court.

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(DHARAM PAL)
Financial Commissioner,
Delhi.
06th January, 2015