

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 203/2013

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

In the matter of:-

1. Shri Dayanand
S/o Shri Ramphal
R/o Village Mandi
Delhi

Petitioners

Versus

1. Smt. Prakasho
W/o Shri Ranjit Singh
R/o Village Mandi
Delhi

Respondent

2. Shri Hari Kishan Murgai
S/o Shri Harbans Lal

3. Smt. Rachana Murgai
W/o Shri Hari Kishan Lal Murgai

Respondent No.2 to 3 are resident of
8, Anand Lok, New Delhi

Also at :-

C/o Shri Rajesh Murgai
S-523A, Greater Kailash-II
New Delhi

4. Smt. Adarsh Murgai
C/o Shri Rajesh Murgai
S-523A, Greater Kailash-II
New Delhi

5. Shri Om Prakash
Deceased through LRs :

- a. Shri Sanjay
- b. Shri Sonu

Respondents No.4 to 5(b)
R/o Village Mandi,
Delhi

DHARAM PAL, FINANCIAL COMMISSIONERORDER dated: 06th January, 2015

1. This order shall dispose of the revision petition filed u/s 187 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as 'DLR Act') by Shri Dayanand against the order dated 14.10.2013 of the Addl. Collector(South), Delhi in case (appeal) no. 19/2013.

2. The brief facts of the case are that Smt. Prakasho w/o Shri Ranjit Singh of village Dera Mandi moved a petition under section 85 of the DLR Act on 17.5.1984 before the SDM/RA against the recorded owners of the land, namely, Shri Om Prakash, Shri Jai Prakash and Shri Dayanand, Sons of Shri Ramphal qua the land measuring 4 bighas 16 biswas, 4 bighas 16 biswas, 4 bighas 16 biswas, 4 bighas 16 biswas and 2 bighas 8 biswas in Khasra No.66/4, 6, 7, 67/10 and 67/11 min. respectively situated in the revenue estate of Village Dera Mandi for the conferment of Bhumidari rights based on adverse possession. The then SDM/RA Shri Ravi Malik rejected her petition for the Bhumidari rights vide order dated 11.7.1986 in case No.119/RA/86 on the grounds that the possession of the petitioner was not without the consent of recorded Bhumidars.

3. However in the meantime, Shri Om Prakash, Shri Jai Prakash and Shri Dayanand in the year 1986 executed two sale deeds, first in favour of Smt. Adarsh Murgai and the second sale in favour of Shri Hari Kishan Murgai and Smt. Rachana Murgai. The purchasers on the basis of sale deed applied to the Tehsildar (Mehrauli) for mutation, who sanctioned the same in favour of Smt. Adarsh Murgai, Shri Hari Kishan Murgai and Smt. Rachana Murgai accordingly.

4. Smt. Prakasho filed an appeal against the order of SDM/RA dated 11.07.1986 before the Addl. Collector, Delhi who vide his order dated 17.7.1989 allowed the appeal of the petitioner. It is pertinent to note here that though the mutation was entered in revenue records vide Tehsildar, Mehrauli order dated 22.6.1987, neither Court of Addl. Collector took a cognizance of the same nor Smt. Prakasho took initiative to file the application to implead vendees as party to the appeal. This resulted in an order being passed without the knowledge of the vendees. When vendees came to know about order dated 17.7.1989, they applied to the Court to implead them as a party. During the pendency of this application, the case was transferred to the Court of Shri A. J. S. Sahni, the then Addl. Collector who accepted the application

vide order dated 26.2.1993 impleading vendees as parties to the appeal and recalled the order of Shri S. L. Bansal dated 17.7.1989. Smt. Prakasho challenged the said order dated 26.2.1993 before the Financial Commissioner, Delhi through two different appeals bearing Nos.38/93 and 39/93. The Financial Commissioner rejected both the applications vide order dated 16.4.1993 thereby upholding the order of Shri A. J. S. Sahni dated 26.2.1993. The case thereafter proceeded in the Court of Addl. Collector. The then Addl. Collector Shri Arvind Ray finally decided the appeals vide order dated 10.2.1993 which the case was remanded back to the lower court. SDM/RA vide order dated 11.5.2001 decided the matter on merits and dismissed the matter again. On 26.3.2003, the then Addl. Collector dismissed the appeal filed by Smt. Prakasho.

5. In revision on 26.5.2003, the Financial Commissioner, however, remanded the matter back again to SDM/RA to determine afresh as to whether the applicant is entitled to be declared as Bhumidar of the suit land and whether the sale of suit land by opposite parties 1 to 3 in favour of opposite parties 4 to 6 was in order. The said order was affirmed by the Hon'ble High Court of Delhi vide order dated 13.4.2005 with the specific direction to SDM/RA to decide the matter within 4 months.

6. RA heard the matter and made following observation in his order dated 20.03.2013:

"Again the opportunity was given to the applicant as well as all opposite parties to adduce additional evidence, if any, in support of their respective claims, however, although more than seven years have been passed, but the applicant did not choose to file any further evidence on her behalf. However, on behalf of opposite parties, Shri Dayanand filed his affidavit in evidence dated 30.05.2011 in the Court, which goes unchallenged by the applicant. The opposite parties 4 to 6 also produced the judgement and order dated 27.08.2003 which was passed subsequent to the aforesaid remand order dated 26.05.03 in the proceedings under section 145 Cr. PC in between the parties with regard to suit land. Shri Bajrang Lal, the then SDM Hauz Khas in his detailed order has recorded categorical finding in favour of opposite parties 4 to 6 and against the applicant to the effect that the vacant physical possession of the land in question was handed over by the vendors to the vendees on the spot on the basis of valid sale deeds and restrained the applicant from disturbing the possession of opposite parties 4 to 6.

There is no denial of the fact by the applicant that Shri Om Prakash, Jai Prakash and Dayanand, sons of Shri Ramphal were the original bhumidars over Khasra No.66/4, 6, 7, 67/10 and 67/11 min. of revenue estate of Village Dera Mandi, Tehsil Mehrauli and that in the year 1983 Smt. Prakasho, applicant was given permission for one fasli only and that after kharif fasli in 1983, the opposite parties 1 to 3 got back the possession from Smt. Prakasho and since then they remained in physical cultivatory possession of aforementioned land till they transferred the same to opposite parties No.4 to 6 through registered sale deed on

01.01.1986 and as such the possession was permissive possession only and not adverse. The khasra girdawari for the year 1984-85, 1985-86 and 1986-87 stands in the name of Om Prakash and others and further in Khasra Girdawari for the years 1987-88, 1988-89 and 1989-90, the entry of name of Hari Kishan Murgai and Ors. is recorded. Thus, it is but clear that on the date of application moved under section 85 of DLR Act by Smt. Prakasho in the year 1984, she was not in possession of the land in question and on that ground also her application is not maintainable. That so far the sale of land on 1.1.1986 by the bhumidars in favour of Shri Hari Kishan Murgai, Smt. Rachna Murgai and Smt. Adarsh Murgai are concerned whose names were duly mutated in revenue records in the year 1987 was legal. Admittedly the applicant Smt. Prakasho did not file any objection against their mutation application. Had she been in possession of the land in question, she must have filed the objections against the mutation application of opposite parties No.4 to 6 which she did not. She even did not implead them as a party in her application before this court of her own. It was only at the instance of purchasers. Opposite parties 4 to 6 that the appellate court impleaded them as a party vide order dated 26.2.1993. Also the applicant did not file any suit within prescribed period of three years for cancellation of sale deed executed by the opposite parties No.1 to 3 in favour of opposite parties No.4 to 6.”

On the basis of these observations the RA/SDM Mehrauli held that Smt. Prakasho was never been in adverse possession of land in question and dismissed the application of Smt. Prakasho under section 85 of DLR Act vide order dated 20.03.2013.

7. Aggrieved by the order dated 20.03.2013 of RA/SDM, Smt. Prakasho filed an appeal before Collector (South) praying therein to set aside the order of RA/SDM passed in the case No. 452/RA/94 and for declaring her bhumidhar of suit land. After hearing, the Collector (South) set aside the order dated 20.03.2013 of RA/SDM and remanded back the case to RA/SDM to dispose of the same on merit afresh after giving hearing to all the parties including the legal heirs. The operative para of the order of collector (South) is as under:

“Case came up for hearing on 14.10.2013. Earlier this court was informed about death of Respondent No.5 and matter to bring legal heirs of said respondent on record. Today it was point out before this Court that said respondent died even when proceedings before SDM/RA were going on. If that is the case, then proceedings before trial court becomes void and so the impugned order. Since proceedings before trial court were held when one of the respondents had expired, the said proceedings will not be maintainable. Accordingly, impugned order is set aside and the case is remanded back to bring legal heirs of dead respondent on record. Needless to mention that SDM/RA will issue the notices to all the parties including legal heirs of dead respondent and after hearing them, dispose the case on merits afresh.”

8. Aggrieved by the order of the Collector (South), Sh. Dayanand filed the present revision petition before this Court for setting aside the impugned

order dated 14.10.2013 of Collector (South) and to restore the order dated 20.03.2013 of RA/SDM.

9. Petitioner has submitted that where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

10. Petitioner also cited the judgment of Apex Court in the case of Union of India Vs. Ram Charan, (deceased) through his Legal Representatives, whereby the Apex Court has held that:

"If the appropriate steps are not taken for substitution and bringing the legal representatives of deceased party in time when the right to sue survives abatement of the suit takes place automatically. Abatement of a suit takes place of its own force by the passage of time and no specific order is required to be passed. In other words legal consequence of abatement takes place if a party to a suit dies and application for substitution is not made in time."

Therefore, petitioner had argued that no specific order was required to be passed by the SDM/RA. In other words legal consequences of abatement takes place if a party to a suit dies and application for substitution is not made in time.

11. Respondent in her reply has not given any specific reason for not bringing the LRs of deceased on record. Rather she has put onus on the Revenue Assistant for passing order in the absence of LRs of deceased person, whereas it was her (Smt. Prakasho) duty to bring LRs of deceased person on record

12. I have considered the submissions made by both the sides and have also gone through the case file including the Lower Court Record. I observe that through the impugned order, the Collector had remanded the matter to the RA/SDM on the ground that proceedings had been conducted without impleading the LRs of Shri Jai Prakash, who is one of the three land owners against whom Smt. Prakasho (Respondent no. 1 herein) had filed a suit under section 85 of the DLR Act. I am of the opinion that it was the duty of Smt. Prakasho (Respondent no. 1 herein) to bring the LRs of Shri Jai Prakash (deceased) on record during the proceedings before RA/SDM and she failed to do so within time and as a result, right to sue of the deceased defendant stood abated in terms of above cited judgment of Apex Court. Therefore it was not correct on the part of the Collector (South) to set aside the order of Revenue Assistant on this ground.

13. In view of the above, I hereby set aside the impugned order dated 14.10.2013 and remand the case back to Collector with the direction to decide the appeal on merit after giving opportunity of being heard to concerned parties.

14. Announced in the open Court.

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