

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 225/2009

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

In the matter of:-

1. Gaon Sabha, Nangloi Jat
Through B.D.O. (West),
Nangloi, Delhi.
2. Union of India
Through under Secretary(R)
Govt. of NCT of Delhi.

Appellant

Versus

1. Sh. Hardev Singh
2. Sh. Mahender Singh
S/o Sh. Hardev Singh
Both R/o Village & P.O.
Nangloi, Delhi-110041.

Respondent

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') by Gaon Sabha Nangloi Jat against the order dated 13.03.2008 of Addl. Collector (West), Delhi in Appeal No. 114/DCW/2007.

2. The brief facts of the case are that land measuring 08 Bighas comprising in Khasra Nos. 56/7(1-19),8(3-15) and 14(2-10) situated in the Revenue Estate of Village Nangloi Jat, Delhi, was vested in Gram Sabha vide SDM/RA order 19.5.1986.

3. Respondents (in this revision petition) filed an application under Appendix-VI Rule 14 of the Delhi Land Reforms Rules, 1954 (herein "the Rules") read with section 185 of the Delhi Reforms Act, 1954 and section 151 CPC before RA/SDM for setting aside ex-parte vesting order dated 19.05.1986 passed in case No. 342/RA/83 in respect of aforesaid suit land alongwith application under section 5 of the Limitation Act for condonation of delay, if any, in filing of the application under Appendix-VI Rule 14 of the Rules.

4. After hearing both the parties, RA/SDM allowed the application under section 5 of the Limitation Act and also decided the application under Appendix-VI Rule 14 of the Rules read with Section 185 of the Act and Section 151 of CPC. After hearing contentions of parties and considering fresh report dated 10.8.2006 of Halqa Patwari, RA/SDM vide his said order dated 15.02.2007 held that proceedings under section 81 of DLR Act against the applicant in respect of land measuring 08 Bighas comprised in Khasra Nos. 56/7(1-19), 8(3-15) and 14(2-10) situated in the Revenue Estate of Village Nangloi Jat, Delhi, are liable to be dropped. Operative para of said order of RA/SDM are as under:-

“I have heard Ld. Counsel for the parties. Counsel for the applicant has argued that the land in question is still under cultivation and no notice whatsoever was ever served upon the applicant after initiation of the proceedings under Section 81 of the Act. It has further been argued that no one can be condemned unheard as it is a principal of natural justice that a party must be given an opportunity of being heard before passing any order against him. Counsel for the applicant has also argued that it is a well-settled law that the period of limitation prescribed starts from the date of knowledge and as such the present application is within limitation. Counsel for the applicant has further relied upon a judgement passed by Ld. Financial Commissioner, Delhi wherein Ld. Financial Commissioner has held that the aggrieved party shall not suffer indefinitely due to non availability/consignment of the trial court record and the impugned order should be set-aside and the proceedings be decided after hearing both the parties.

Since the previous case file is not available, in view of the judgment passed by the Ld. Financial Commissioner, Delhi, I am satisfied with the contention of Ld. Counsel for applicant that the applicant can not suffer indefinitely due non availability/consignment of the previous case file and the contents as set out by the applicant in his application under section 5 of the Limitation Act has to be accepted as true and as such the contention that the applicant had no knowledge about passing of the impugned order prior to 10.04.2003 is to be believed. As a result, I allow the application under section 5 of the Limitation Act for the reasons stated therein.

Now, coming to the main application under Appendix-IV Rule 14 of the Rules read with Section 185 of the Act and 151 CPC for setting aside ex-parte vesting order dated 19.05.1986, the same has to be accepted for the reasons stated in the forgoing para. As a result, I allow the application Appendix-IV Rule 14 of the Rules read with Section 185 of the Act and 151 CPC for the reasons stated therein and accordingly set-aside ex-parte vesting order dated 19.05.1986 to the extent of land in question i.e. land measuring 8 Bigha 4 Biswa comprising in Khasra Nos. 56/7 (1-19), 8(3-15) and 14(2-10).

With the consent of Ld. Counsel for the parties, I proceed to decide the proceedings initiated against the respondents under Section 81 of the Act. A fresh land status report dated 10.08.2006 has been obtained from Halqa Patwari which is placed in the file. Halqa Patwari has reported that as per site inspection, the land in question is being used for agricultural purpose and more precisely a

nursery is existing on land bearing Khasra Nos.56/7(1-19) and 14(2-10) and land measuring 3 Bigha 15 Biswa out of Khasra No.56/8(4-5) has been ploughed and is in a cultivable position and there is no violation of Section 81 of the DLR Act. In view of the Halqa Patwari report dated 10.08.2006 as well as the contentions of Ld. Counsel for the applicant, I am satisfied that the present proceedings initiated against the respondent are liable to be dropped to the extent of land in question i.e. land measuring 8 Bigha 4 Biswa Comprised in Khasra Nos. 56/7(1-19), 8(3-15) and 14(2-10) situated in the revenue estate of village Nangloi Jat, Delhi and the same is dropped. The land in question is restored to the applicant/respondent.”

5. Gaon Sabha filed an appeal before the Addl. Collector (West), Delhi against the said order of RA/SDM. The Addl. Collector (West) also called another report from Halqa Patwari. After hearing arguments, perusing the lower court record and considering the fresh report dated 04.03.2008 of Halqa Patwari, the Addl. Collector (West) vide his order dated 13.03.2008, upheld the order dated 15.2.2007 of RA/SDM. Operative paras of said order are as under:-

“Perusal of lower court clearly indicates the lower court gave that appellant ample opportunity of being heard as well as argued the matter. Further I am of the considered view that learned SDM/RA (Punjabi Bagh) has rightly passed the order as he is of view that the in the absence of previous case file contention of respondent accepted as true and as such the contention that the respondent had not knowledge about passing of the impugned order prior to 10.04.2003 is to be believed. SDM/RA (Punjabi Bagh) before passing the final order has also called the status report from the Halqa Patwari, which was also perused. As per halqa patwai report, land in question is being used for agricultural purposes.

In a meantime, status report of land in question was called from Halqa Patwari, which is placed on records. As per report, land in question is lying vacant and is being used for agricultural purposes.

In view of above, I found that there is no need to interfere in the order dated 15.02.2007 passed by the SDM/RA (Punjabi Bagh)

In view if the facts mentioned above, the present appeal pertaining to Kh. Nos. 56/7 (1-19), 56/8(3-15) & 56/14 (2-10) situated in the revenue estate of village Nangloi Jat, Delhi filed by Gaon Sabha Tikri Kalan through BDO (west) is dismissed. Parties to bear their own costs.”

6. Aggrieved by the order of Addl. Collector (South) Gaon Sabha filed the present revision petition under section 187 of Delhi Land Reform Act, 1954 against the order dated 13.03.2008 of Addl. Collector (West), Delhi in Appeal No. 114/DCW/2007.

7. Gaon Sabha Nagloi Jat (the petitioner herein) has submitted that land status report/ Halqa Patwari report dated 10.08.2006 was fake and was submitted in collusion with the respondents. Gaon Sabha further argued that

despite specific allegation of Patwari Report being false no attempt was made by Ld. Addl. Collector to verify the veracity of Halqa Patwari report. It was argued that respondents had not filed any documentary evidence i.e. Khasra/Girdwari report in support of his application. In the absence of any such evidence the land status report of Halqa Patwari should not have been relied upon.

8. Respondents denied the submission of Petitioner and submitted that if the report of patwari if any was false, a notice was required to be served upon the bhumidar concerned for proceedings u/s 81 DLR Act. There was no notice of any proceedings on the bhumidar. There is no question of proceeding ex-parte and there was no basis of starting proceedings and passing final orders u/s 81. The land is still with the bhumidar. The filing of application under Appendix VI Rule 14 of DLR Act by the bhumidar is not denied. The order of restoration of the land in question to the bhumidar is on true facts and on the basis of halka patwari report, stating that there is no violation of section 81.

9. Gaon Sabha in the petition has further stated that main questions involved in this Revision Petition is whether the land use in the land in question has been changed and whether there is a contravention of section 81 of the DLR Act or not?

10. I have heard both the parties at length and have gone through the material placed on record. The contention that Gaon Sabha had disputed the veracity/genuineness of the Halqa Patwari report before the Addl. Collector is not denied by the respondent. In my opinion the Addl. Collector should have asked the parties to place evidences on record and the veracity of Halqa Patwari report should have been verified by calling a report by the senior officer such as Tehsildar or SDM. His decision should not have been based upon the patwari report alone when its authenticity/veracity was questioned by Gaon Sabha.

11. In spite of the specific allegation of Gaon Sabha, no attempts were made by the Addl. Collector to verify the genuineness/veracity of the Halqa Patwari Report. This becomes further relevant in view of the following submissions of Gaon Sabha vide para 7 of their written submissions :-

“the land status report vide which the DC had orders is fake report and the Ld. DC has not verified the report by sending some responsible person at site to know the factual position of the disputed land as there is no land in Nangloi which can be used for agricultural use as there are many unauthorized colonies exist in Nangloi and the Counsel for Respondent had also admitted orally this point at the time of oral argument in the Hon’ble Court.”

12. In the light of above, I am of the opinion that justice will be served if the order dated 13.3.2008 of Addl. Collector is set aside and the case is remanded back to Addl. Collector with the direction to decide the case on merit afresh after getting the report of Halqa Patwari verified through a senior officer such as Tehsildar through a field inspection and after affording opportunity of being heard to the concerned parties. I order accordingly.

13. Pronounced in the open Court.

-SD-

(DHARAM PAL)

Financial Commissioner,
Delhi.

06th January, 2015