

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 363/2011

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

In the matter of :-

1. Gaon Sabha, Jharoda Kalan,
Through B.D.O. (South-West),
BOD Office Complex, Najafgarh,
New Delhi. Petitioner

Versus

1. Sh. Sardare
S/o Sh. Ram Sapru,
R/o Village & P.O. Jharoda Kalan,
New Delhi. Respondent

DHARAM PAL, FINANCIAL COMMISSIONER

ORDER dated: 3rd February, 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 Gaon Sabha Jharoda Kalan against the order dated 28/01/2011 of Dy. Commissioner (South-West), Delhi.
2. The brief facts of the case as submitted by the petitioner are that as per the claim of Shri Sardare (Respondent herein) his ancestors were in ownership and possession of land bearing khasra No. 97/6 (4-16), situated in the Revenue Estate of Village Jharoda Kalan, New Delhi, prior to the consolidation proceedings of Jharoda Village in 1949-50. However, the said land was split into two parts, probably in 1959-60. One parcel bearing Khasra No. 97/6/2 (2-0) was vested in Gaon Sabha and the other parcel bearing Khasra No. 97/6/1 (2-16), continued to be recorded in the name of Respondents's ancestors. The respondent filed a suit No. 28/1971 for correction of records in the court of Shri K.M. Sahni, the then SDM/RA who vide order dated 24/09/1971 allowed the same and directed Tehsildar for making necessary correction in Revenue Records. Shri Sardare has further stated that the originally total area of the Khasra No. 97/6 was 4 bigha 16 biswas but how and when this Khasra No. was split in two parts and one part i.e. Khasra No.97/6/2 (2-0) was vested in Gaon Sabha is not known. As and

when he came to know about vesting of the part of the land in Gaon Sabha, he filed a petition under Section 11 of the Delhi Land Reforms Act in the court of the concerned SDM/RA for declaration of Bhumidari rights. However, SDM/RA, Punjabi Bagh vide order dated 28/06/1988 dismissed the petition of the respondent. Aggrieved by the said order, he filed an appeal before DC (South-West) which was allowed on 14/08/1988 and the case was remanded back to SDM/RA, Najafgarh with the directions to decide the case afresh under Section 11 or 85 of DLR Act, 1954. SDM/RA, Najafgarh, dismissed the case on 14/06/2006 against which Shri Sardare filed an appeal before the Deputy Commission (South-West) who vide order dated 30/06/2006 again set aside the order of SDM/RA, Najafgarh vide order dated 14/06/2006 and remanded the case back to SDM/RA, Najafgarh. The court of SDM/RA, Najafgarh vide order dated 18/08/2008 once again dismissed the suit of Shri Sardare. The said order of SDM/RA was again challenged by filing appeal bearing No. 65/08 before the learned Collector, District South-West who vide impugned order dated 28/01/2011 allowed the appeal and once again set aside the order dated 18/08/2008 passed by SDM/RA, Najafgarh. He further held that the whole Khasra No. 97/6 (4-16) was the ancestral property of the respondent and due to some mistake of the revenue officials Khasra No. 97/6/2 (2-0) was recorded in the name of Gaon Sabha. Collector further directed that the said land be recorded in the name of the respondent as Bhumidhar.

3. Aggrieved by the impugned order dated 28/01/2011 of Dy. Commissioner (South-West), Gaon Sabha Jharoda Kalan filed this revision petition on the following grounds :-

- (i) That Khasra No. 97/6 measuring 4 Bigha 16 Biswas was split in 97/6/2(2-0) and 97/6/1(2-16). The present revision petition pertains to Khasra no. 97/6/2 (2-0) which was vested in Gaon Sabha and was mentioned Banjar (Gair Mumkin) which goes to establish that Banjar Qadim means non-cultivable was therefore, never in cultivatory possession of the respondent. It was Gaon Sabha who was always and till today is in possession of the suit land.
- (ii) The respondent never remained in adverse possession of the suit land that too against the consent of Gaon Sabha which is one of Main requirement/ingredient of section 85 of DLR Act on the basis of which the person can be declared bhumidhar. The Respondent has not placed any documentary evidence to establish his adverse cutivatory possession. The oral evidence led by respondent herein and his witnesses has no value in the eyes of law as witnesses are interested and tutored one. The Gaon Sabha is recorded Bhumidhar of land and is in possession thereof. The petitioner has sought relief under section

11 as well as section 85 of the act which is against the spirit of law and is not permissible. Moreover, the suit of the respondent herein under section 85 of the act is premature for the reasons that the respondent herein has failed to prove his adverse cultivatory and hostile possession of the suit land.

(iii) That the respondent has failed to comply with mandatory requirement of law and the impugned order of the learned Collector was wrong in deciding the cultivator possession of the respondent on basis of site inspection not on basis of the evidence.

(iv) That the learned Collector was wrong in deciding the claim of the respondent right and justified in the words “more or less accepted by learned two predecessors”. It is submitted that the appeal was heard by the two learned predecessors of the Addl. Collector and both were not satisfied with the submissions and evidence of the respondent as a result both the times the appeal was remanded back for the proper and fresh determination. The learned Addl. Collector was wrong in reaching the conclusion that the learned predecessor of the learned Collector “more or less accepted the right of the appellant/ the present respondent over the suit land.”

5. Respondent in his reply has submitted :-

(i) That the land bearing Khasra number 97/6 measuring 4 bigha 16 biswas was allotted to the respondent and their predecessor-in-interest during consolidation operation carried out in the village in the year 1953-54 and the same is clear from the Khatoni Paimaish for the year 1953-54 available on record and this fact is also admitted by the Tehsildar. The report of Tehsildar is available on record.

(ii) That the originally total area of the Khasra No. 97/6 was 4 Bigha 16 Biswas but when this Khasra number was split in two parts is not on record and how this Khasra number was split in two parts is not known.

(iii) That after division of this Khasra number in two parts i.e. 97/6/1/ (2-16) and 97/6/2 (2-0), the Khasra number 97/6/2 (2-0) was vested in Gaon Sabha and the Khasra number 97/6/1 (2-16) continued in the record in the name of the respondent or their predecessors-in-interest.

(iv) That there is no such legal order passed by any competent authority whereby the Khasra number 97/6/2 (2-0) came to be vested in

Gaon Sabha but only an entry has been made in the revenue record to this effect.

(v) That the respondent had filed an application for correction of Khasra Girdawari in respect of the suit land and the same was allowed by the Ld. SDM vide its order dated 24/09/1971. Copy of this order is available on record. The Gaon Sabha did not challenge the said order and this order had attained finality.

(vi) That the suit land does not originally belongs to Gaon Sabha but has come to the Gaon Sabha by mistake in the revenue record.

(vii) That when the original Khasra No. 97/6 (4-16) was in the ownership of the respondent, how can one of its part become Gaon Sabha land. This fact has not been explained by the Gaon Sabha and it is a simple mistake on the part of the revenue authorities committed during 1959-60.

(viii) That if the order of the SDM/RA dated 24/09/1971 was complied with its net result was that the respondent would have got the ownership right of the land.

(ix) That the respondent is in possession of the suit land. A well along with tubewell also exists on the suit land. The tubewell is being run by electricity and is in operation. Has this being a Gaon Sabha land the respondent might not have got the electricity connection.

(x) That the present case is a case of rectification of the revenue record instead of looking into the merits of the claim of the respondent for making him as bhumidar.

7. I have heard both the parties at length and have gone through the material placed on records and observed that Gaon Sabha has not disputed that whole of Khasra no. 96/6 measuring 4 Bigha 16 Biswa, village Jharoda Kalan, Delhi was recorded in the name of Sh. Sardare, Respondent in 1949-50. None of the parties were able to explain as to how original Khasra No.97/6 was split in two parts and how one of its part i.e. Khasra No.97/6/2 was vested in Gaon Sabha.

8. Gaon Sabha has disputed the adverse cultivatory possession of Sh. Sardare/respondent on the suit land on the ground that the said land was Banjar Qadim, hence the same was not cultivable. Therefore, there was no question of adverse cultivatory possession of Sh. Sardare on the suit land. Further the respondent has not given sufficient proof of adverse cultivatory possession. However,, Gaon Sabha was unable to explain how Khasra

No.97/6/2 came to be vested in Gaon Sabha. No vesting order has been placed on record to this effect.

9. It is transpired from the records that vide order dated 24.09.1971, Sh. K.M. Sahni vide order dated 24.09.71 allowed the correction of Khasra girdawari and directed Tehsildar for making necessary correction in Revenue Records, Rabi 70. Possession of the respondent was also shown to be recorded in some of Khasra Girdawri. However, this order appears to have not been implemented till date. The respondent further submitted that he obtained loan from Tehsildar, Delhi for installation of Tube Well on the suit land and a testimony to this effect was given by the Clerk of Recovery Branch in the court of SDM.

10. Further the respondent has submitted copies of P-4 form for the period 1977-78, 1978-79, 1979-80, 1980-81, 1981-82, 1982-83 showing Khasra Girdawari in his favour, which shows the land is being cultivated by Sh. Sardare. Further, collector, South West has also visited the suit land along with Tehsildar Najafgarh in December 2010 and found crops of wheat/mustered sown by Sh. Sardare. A Tube Well was also found functioning on the suit land and electricity connection was also in the name of respondent. These facts suggest that land was being cultivated by Shri Sardare/Respondent. From the perusal of records, it is noticed that Gaon Sabha was recorded owner since 1959-60 but it is also evident that Shri Sardare was in adverse cultivatory possession of suit land. I further find that present dispute has arisen because order dated 24.9.1971 vide which Tehsildar was directed to make necessary corrections in Khasra Girdawari has remained un-implemented till date. As this order was never challenged same has attained finality. Had this order been implemented, present dispute would not have arisen. In the light of the above, Deputy Commissioner's direction to correct record, seems reasonable and justified.

11. In the light of above, I find no infirmity in the order dated 28.01.2011 passed by the Deputy Commissioner (SW). The Revision Petition is hereby dismissed.

12. Pronounced in the open Court.

(DHARAM PAL)
Financial Commissioner,
Delhi.
3rd February, 2015