

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 66/2007

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

In the matter of:-

1. Sh. Radhey Shyam
S/o Lakhmi Chand
2. Sh. Sanjiv Gupta
3. Sh. Ajay Gupta
Both sons of late Sat Narain

Through their attorney Sh. Mahesh Chand
S/o late Yogeshwar Dayal
361, Main Bus Stand, Sant nagar
Vill. Burari, Delhi-84.

4. Smt. Chitra Navtia
W/o Sh. Nath Mal Navatia
Through her attorney Sh. Rakesh Kumar
S/o Sh. Balak Ram,
R/o Village Aasoda,
Tehsil Hapur, Distt. Ghaziabad
U.P.

Petitioners

Versus

1. Gaon Sabha Burari
Through B.D.O. (Civil Lines)
Tis Hazari Court,
Delhi-54
2. Union of India
Through Secretary/Office of Commissioner,
B.D.O. (Civil Lines)
Tis Hazari, Delhi-54.

Respondents

D.M. SPOLIA, FINANCIAL COMMISSIONER

ORDER dated: August 14, 2014

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') filed by Sh. Radhey Shyam & Ors. against the order dated April 12, 2006 of Revenue Assistant/SDM (Civil Lines) passed in case no. 239/RA/CL/05 and against order dated February 23, 2007 vide which application under Appendix VI Rule 14 of DLR Rules has been dismissed.

2. The brief history of the case is that Shri Radhey Shyam s/o Lakhmi Chand and Shri Sat Narain s/o Lakhmi Chand were the recorded owners of Khasra No. 23/13 (5-18) in the revenue estate of village Burari (hereinafter referred to as 'suit land'). After the death of the Shri Sat Narain s/o Sh. Lakhmi Chand, his share in the land was mutated in favour of his legal heir Shri Sanjiv Gupta and Shri Ajay Gupta vide mutation order dated February 20, 2001 passed by Naib Tehsildar.

3. In the year 2005, on the basis of a report of the halqa patwari dated October 25, 2005, wherein it was alleged that the agricultural land is being converted to non-agricultural use by way of dumping of earth and plotting in contravention of Section 81 of DLR Act, proceedings u/s 81 of DLR Act, were initiated against the recorded bhumidhar in the court of Revenue Assistant/SDM (Civil Lines) and on January 04, 2006, a conditional order was passed by the RA/SDM stating that:

The said land be converted back into agricultural purposes within three months from the date of this order. I further order that if respondents do not convert the suit land back into agricultural use within the said period, the respondents shall stand ejected from the above Khasra Nos. and suit

land automatically be vested in the Gram Sabha without any further reference to the respondents.+(SIC)

Further, above mentioned conditional order was made absolute by the Revenue Assistant/SDM (Civil Lines) vide his order dated April 12, 2006 by vesting the suit land, i.e. khasra no 23/13 (5-18) in the gaon sabha. Operative part of the order dated April 12, 2006 vide which the conditional order was made absolute, states that:

"The respondent(s) Sh. Satnarain s/o Sh. Lakhmi Chand r/o 11705-06 Shakti Nagar, Delhi was/were directed by the above order to convert the suit land back to agricultural use within three months failing which he/they was/were to be ejected from the above land in dispute and his/their rights on the suit land be extinguished. The Halka Patwari through the Tehsildar (C.L.) dated 6-4-06 has reported that the suit land is still being used for non agricultural purposes." (SIC)

4. Subsequently, a number of applications were filed under Appendix VI Rule 14 read with section 151 CPC by Sh. Mahesh Tyagi, Sh. Ramesh Tyagi and Sh. Rakesh Kumar on behalf of respondents before the SDM. One application was also filed by Smt. Chitra Nawatia w/o Nathmal Navatia under Order 01 Rule 10 read with Section 151 of CPC who had bought 01 bigha and 01 biswa out of the suit land herein, vide registered sale deed dated July 10, 1991. These applications were also dismissed by the RA/SDM vide his order dated February 23, 2007.

5. Aggrieved by the order of Revenue Assistant/SDM (Civil Lines), the present revision petition has been filed by Sh. Radhey Shaym & Ors. u/s 187 of the DLR Act against the order dated April 12, 2006 passed in Case No. 239/RA/CL/05 and against order dated February 23, 2007 vide which applications under Appendix VI Rule 14 of Delhi Land Revenue Rules, 1954 were dismissed.

6. The main contention of the counsel for the petitioners was that no notices under Rule 21 B of DLR Rules were issued to the recorded bhumidhar, which is a mandatory provision under Section 81 of DLR Act, 1954. Further, it was submitted by the Counsel for petitioner that LR 48 was issued in the name of Shri Sat Narain s/o Shri Lakhmi Chand only, who had already died and mutation had already been sanctioned in favour of his legal heirs i.e. Shri Sanjiv Gupta and Shri Ajay Gupta vide order dated February 20, 2001 of Naib Tehsildar. In support of his claim Counsel for the petitioners referred to the copy of *fard* issued on October 25, 2005. Moreover, report of halqa patwari dated October 25, 2005 was also referred, on the basis of which proceeding u/s 81 of DLR Act had been instituted. The report of halqa patwari bears the name of recorded bhumidhars as %Radhey Shyam s/o Lakhmi Chand, Sanjiv Gupta and Ajay Gupta s/o Sh. Sat Narain r/o 11705-6, Shakti Nagar, Delhi+.

7. Further, Counsel for the petitioner argued that Ld. RA/SDM (Civil Lines) had not made any effort to ensure the delivery of notices to the petitioners herein. Even Ld. RA/SDM (Civil Lines) did not bother to inquire whether the suit land is being used for agricultural purposes or otherwise or who is in possession of the suit land as required under Rule 21-B of DLR Rules.

8. Further, it was also contended by the counsel for the petitioner that it was not ensured by the Ld RA/SDM (Civil Lines) whether the conditional order, which was never served, was actually served upon the recorded bhumidhars or not.

9. In reply, the respondent, i.e. Gaon Sabha, Kamalpur Burari submitted that Ld. RA/SDM (Civil Lines) followed the due process as

per law and notices were issued to all the petitioners herein. However, Counsel for Gaon Sabha could not put forth any substantial/convincing evidence to counter the petitioner's claim

10. After hearing the arguments, record of the Lower Court, which were summoned by this Court and received on April 13, 2010, was also perused and it was observed that the case u/s 81 of DLR Act, 1954 was instituted on the suit land in the court of RA on December 12, 2005 and notices in the form of LR 48 under Rule 21(B) were issued in the name of Sh. Sat Narain s/o Sh. Lakhmi Chand and BDO (North) through Panchayat Secretary for December 22, 2005. As per the proceedings dated December 22, 2005, Sh. Sumender s/o Sh. Radhey Shyam on behalf of respondents was present, who was directed to file the status report after removing the violations, if any u/s 81 on the next date of hearing which was December 27, 2005 (within 05 days).

11. Further, the case was taken up on December 27, 2005 by the RA/SDM, but none was present. Conditional order was passed by the RA/SDM (Civil Lines) and the same was made absolute on April 12, 2006 and this time also, none was present.

12. Having heard both the sides and upon perusal of the impugned orders dated April 12, 2006 and February 23, 2007, and the material available on record, the following points emerge. That:

- i) Notice was issued in the name of Sh. Sat Narain s/o Sh. Lakhmi Chand only who had already died while the name of his legal heirs had already been mutated in the revenue records.

- ii) Conditional order dated January 04, 2006 as well as final order of vesting the suit land in the gaon sabha dated April 12, 2006 passed by Ld. RA/SDM (Civil Lines) against the deceased Shri Sat Narain s/o Sh. Lakhmi Chand.
- iii) During the proceedings u/s 81 of DLR Act, 1954 before RA/SDM, none appeared on behalf of respondents except on December 22, 2005, when Sh. Sumender s/o Sh. Radhey Shyam joined the proceedings.
- iv) Order dated April 12, 2006 of vesting the suit land in the gaon sabha refers to the report of halka patwari reportedly issued through Tehsildar (Civil Lines) dated April 06, 2006, but the report is not signed by the Tehsildar.
- v) There is no proof available in the lower court file regarding the delivery of notices or service of conditional order on the recorded bhumidhar.

In addition to the above, Hon^{ble} Supreme Court had held in the matter of ~~%~~ Kanwar Pal & Ors. V/s Gram Sabha Kirari+ AIR 1996 (SC) 2780 that:

“where co-sharer are in individual possession of land and agricultural land put to non-agricultural use. For taking action u/s 81 notice is essential to be issued individually to all the appellants before any action is sought to be taken. Ejectment notice served on one co-sharer would be no notice on other co-sharers.”

13. It is clear from the above that notices must be issued to every co-sharer. However, in the present case notices were issued in favour of an already dead person, whose share had also been mutated/transferred in favour of his legal heir.

14. Further, while Ld. RA/SDM decided the application of Smt. Chitra Nawatia under Order 01 Rule 10 read with Section 151 CPC, no opportunity was provided to the applicant to present her case effectively. But, she too must be given an opportunity, since Smt. Chitra Nawatia had already purchased 1 bigha and 1 biswa land out of 5 bigha and 8 biswa of suit land by the registered sale deed dated July 10, 1991 and created her right and title in the above mentioned land.

15. The Hon^{ble} High Court has held the same in the WP(C) no. 12784/2009 titled %Satya Rani V/s Govt. of NCT of Delhi, wherein appeal of bona-fide purchaser was allowed (whose name was not mutated in the revenue record) and the matter was remanded back to the Addl. Collector to hear the petitioner on merits.

16. In view of the above, it is evident that the lower court has failed to adhere to the principles of natural justice, and no opportunity appears to have been given to the petitioners herein. Accordingly, the revision petition is allowed. The order dated April 12, 2006 and February 23, 2007 of Ld. RA/SDM are set aside. The matter is remanded back to the RA/SDM (Civil Lines) to hear afresh by providing fair opportunity to all concerned.

17. Pronounced in the open Court.

(D.M. SPOLIA)
Financial Commissioner,
Delhi.
August 14, 2014