

(2010) 07 DEL CK 0225

In the Delhi High Court

Case No : Writ Petition (C) 4414 of 2010 and C.M. No. 8772 of 2010

Alka Jain

APPELLANT

Vs

NCT of Delhi and Others

RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Delhi Land Reforms Act, 1954 — Section 81, 82

Citation : (2010) 07 DEL CK 0225

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sandeep Khatri, for the Appellant; Najmi Waziri, for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Sahai Endlaw, J.—The petitioner, claiming to be the owner of land in village Nangli Poona, Delhi, by this writ petition seeks to restrain the respondents from dispossessing her therefrom pursuant to the order dated 22nd February, 2002 of the respondent No. 2 SDM/Revenue Assistant, Narela vesting the said land in the Gaon Sabha, under the provision of Section 81 of the Delhi Land Reforms Act, 1954.

2. It appears that the proceedings u/s 81 of the Delhi Land Reforms Act commenced in or about the year 1993. The petitioner acquired the said land vide Sale Deed of the year 1996. The said Sale Deed was executed pursuant to the NOC issued by the respondents. Though in the said NOC, it is recorded that there is a report u/s 81 of the Act of the year 1989 with respect to the said land but it is further stated that at the spot, the predecessor in interest of the petitioner was sowing the crop and the land till then had not vested in the Gaon Sabha; accordingly the NOC for transfer of land in favour of the petitioner was issued.

3. It appears that the proceedings u/s 81 aforesaid commenced in the year 1993 resulted in the order dated 22nd February, 2002 (supra) of vesting of land in

Gaon Sabha. The counsel for the petitioner states that the petitioner was never served with any notice of the said proceedings and had no knowledge of the same till now when he was sought to be dispossessed in pursuance to the order aforesaid. Though there is certain amount of negligence on the part of the petitioner also in, notwithstanding the notice as aforesaid of the proceedings u/s 81 of the Act pending even at the time of his purchase, not pursuing/contesting the same but the fact remains that the respondents issued the NOC and in pursuance whereof the Sale Deed was executed in favour of the petitioner. The respondent No. 2 ought to have given notice to the petitioner who on execution of Sale Deed became owner/bhoomidar of the land, and heard the petitioner before making any order vesting the land in the Gaon Sabha and the petitioner was to be ejected therefrom; particularly when even after 1996 the proceedings remained pending till 22nd February, 2002 as aforesaid.

4. An order u/s 81 of the Act has serious and adverse consequences (See *Rajwanti Vs. Govt. of NCT of Delhi and Others* . The Division Bench of this Court in *Kamal Kant Baporia Vs. G.S. Kirari Suleman Nagar and Others* held:

It is true that these provisions (Section 81 & 82) per se don't stipulate issue of notice to the Bhumidar/Asami concerned but such notice would have to be read in these because his property could not be taken at his back in violation of principles of natural justice. He had a right to show in the proceedings taken against him that he had not committed any breach or the action alleged against him was justified.

5. The counsel for the respondents appearing on advance notice has fairly stated that instead of issuing notice of the present petition and keeping the same pending here, it will be expedient to remand the same to the respondent No. 2 to dispose of the same after giving an opportunity of hearing to the petitioner. This course, I find was followed by the Division Bench of this Court in *Raj Kumar Vs. Financial Commissioner and Others* .

6. The counsel for the respondents at this stage clarifies that the said statement has been made for the purpose of expediency and without verifying the records and merely on the basis of the statement on oath of the petitioner that the petitioner was not heard and no notice was issued to the petitioner. In the circumstances, if it is found that the petitioner herein was served with the notice of the proceedings or had participated and/or had been heard before the order dated 22nd February, 2002 was made, it shall be open to the respondents to apply to this Court for revocation of this order and for proceeding against the petitioner for perjury.

7. The counsel for the respondents at this stage has also contended that this writ petition is not maintainable for the reason of remedy of appeal before the Deputy Commissioner being available to the petitioner against the order dated 22nd February, 2002 of the SDM/Revenue Assistant, Narela. The counsel for the petitioner controverts contending that since no suit or proceeding u/s 81 was

initiated against the petitioner, the petitioner could not have availed herself of the remedy of appeal. It is made clear that this point is left open and this order is not to be a precedent.

8. The petition is allowed in aforesaid terms. The order dated 22nd February, 2002 of the SDM/Revenue Assistant, Narela vesting the land of the petitioner in the Gaon Sabha is set aside and the matter is remanded for adjudication afresh after giving an opportunity of hearing to the petitioner.

9. The counsel for the respondents further states at this stage that he has no instructions whether the petitioner is still in possession of the land or not. In the circumstances, it is directed that if the petitioner has not been dispossessed as yet, he be not dispossessed till the decision on remand by the Revenue Assistant. The petitioner is further restrained from alienating, encumbering and parting with the possession and/or raising construction on the land till the final decision as aforesaid.

10. In the aforesaid terms, the writ petition is disposed of. Parties to bear their own costs.

Dasti under signature of the Court Master to the counsel for the parties.

CM No. 8773/2010 (under Section 151 CPC for exemption)

Allowed, subject to just exceptions.