
(1999) 12 DEL CK 0026

In the Delhi High Court

Case No : LPA No. 74 of 1999 and CM No. 608 of 1999

Anil Sagar

APPELLANT

Vs

Gaon Sabha Village and Others

RESPONDENT

Date of Decision : 02-12-1999

Acts Referred:

Citation : (2000) 3 AD 177 : (2000) 84 DLT 212 : (2000) 56 DRJ 155

Hon'ble Judges : Surinder Kumar Aggarwal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. S.S. Panwar, for the Appellant; Mr. S.N. Kumar and Ms. Pinki Anand, for the Respondent

Judgement

Devinder Gupta, J.—Admit.

2. Learned Counsel for the parties state that as the point raised is short the appeal may be heard and disposed of today.

3. Heard.

4. Appeal is against the order passed on 17th November, 1998 by learned Single Judge of this Court dismissing the appellant's Writ Petition No. 5547/98.

5. The petitioner had challenged the orders Annexures A-17 passed by Revenue Assistant, A-18 passed by the Collector (South) and A-24 passed by the learned Financial Commissioner. One of the grounds raised in the writ petition and in this appeal is that after show cause notice Annexure A-16 had been issued to the appellant. The Revenue Assistant without following the provisions of Sub-rule (4) of Rule 170 of the Delhi Land Reforms Rules, 1954 proceeded to dispose of the proceedings holding the appellant to be an encroacher upon the land and thereby proceeded to issue directions for ejectment of the appellant.

6. It is not in dispute that show cause notice Annexure A-16 was issued. The appellant was called up to show cause and appear before the Revenue Assistant on 19th November, 1996 at 11.00 a.m. This notice was served on the appellant

only the previous evening i.e. 18th November, 1996. Without giving an opportunity to file objections or to lead evidence, if any, the Revenue Assistant proceeded ahead in the matter and passed a final order. Sub-rule (4) of Rule 170 enjoins upon Revenue Assistant to hear the Gaon Sabha and the objector and to record any evidence, if the person to whom the notice has been issued. This is a part of summary procedure provided for ejectment of persons, alleged to be occupying land without any title. The appellant had in the writ petition placed material in support of his case that he is neither an encroacher, nor a trespasser. He had a valid title to the property. We are not inclined to go into the merits in this appeal, which is a question which ought to be decided by the concerned authorities. Since due and adequate opportunity was not allowed to the appellant to file objections and to lead evidence, we are of the view that the impugned orders under challenge are vitiated in law.

7. Accordingly we allow the appeal and set aside the impugned orders with direction that the appellant will appear before the Revenue Assistant who will hear and dispose of the matter afresh. Appellant is directed to appear before the Revenue Assistant, Hauz Khas on 10th January, 2000 on which date the appellant will file objections, if any, and in case the appellant would express his intention to lead evidence, the Revenue Assistant will afford said opportunity to the appellant to lead evidence and thereafter dispose of the matter in accordance with law. The appellant's possession will not be disturbed till 10th January, 2000 where after the same will be subject to the orders to be passed by the Revenue Assistant in accordance with law.

8. Copy of the order be given dusty to learned Counsel for the parties. Appeal stands disposed of.