
(2007) 09 DEL CK 0220

In the Delhi High Court

Case No : Writ Petition (Civil) No"s. 10943-45 of 2006

Arun Kumar and Others

APPELLANT

Vs

NCT of Delhi and Others

RESPONDENT

Date of Decision : 20-09-2007

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42

Citation : (2007) 09 DEL CK 0220

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Sudhir Nandrajog, Arun Khatu, Sanam Sharma and Tatini Basu, for the Appellant; Sujata Kashyap and Rachna Gauta for Respondent Nos. 1 to 4 and R.S. Tomar, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—This writ petition has been filed by the petitioners who claim to be permanent resident of house built in khasra No. 197/2 in extended Lal Dora of the village Burari. The petitioners have submitted that one Shri Surinder Singh has a residential house in Khasra No. 193/1 on the Western side of their property while some other villagers have residential accommodation in Khasra No. 196 on the Northern side of their property. So far as the Southern side is concerned, it is further contended that some other villagers have property which is located in Khasra No. 198/2. Thus on the contention that the petitioner's house is landlocked by the properties of other villagers except on the Eastern Side, the present writ petition has been filed urging that on the Eastern side, there was a passage described as "Rasta" which was located in Khasra No. 197/1 and 198/1 which was being used by the petitioners for the last 50 years.

2. The consolidation proceedings in village Burari are stated to have been commenced and concluded in the year 1980-1981. The plot of the petitioners in Khasra No. 197/2 was made Kayam at its present position. Before and after the

consolidation proceedings, the Khasra No. 197/1 & 198/1 were being used as "Rasta" which is the only passage available to the petitioners.

3. I find that it is an admitted position that Khasra No. 197/1 has been reflected as "Rasta" in the revenue records more particularly in the khatauni of 1985-86 and 1993-94 and also in the Khasra Girdawari of the year 2004-2005.

4. A grievance has been expressed that on a complaint of one Shri Adesh Tyagi made to the Deputy Commissioner (North) to the effect that Khasra No. 197/1 and Khasra No. 198/1 were declared as Gram Sabha plots at the time of consolidation of the village Burari and that some officials of the revenue department manipulated to show these plots as a "Rasta", a prayer was made for correcting the revenue record and including the lands with walls.

5. Mr. Sudhir Nandrajog, learned Counsel appearing for the petitioner, has contended that on this complaint, no notice was issued to the petitioner even though the petitioner was the person effected by the action of the respondent. Without hearing the petitioner, an order dated 8th June, 2006 was passed by the Deputy Commissioner (North), directing the revenue authorities to make the corrections in the revenue records and enter the Khasra No. 197/1 & 198/1 of the village Burari as Gram Sabha land instead of the Gram Sabha Rasta.

6. Immediately on gaining knowledge of the orders passed by the Deputy Commissioner (North), the petitioner moved an application dated 15th June, 2006 for recall/reconsideration of the order but no action was taken thereon. This writ petition has been filed on the grievance that the revenue authorities were trying to take possession of Khasra No. 197/1 & 198/1 and are threatening to raise construction over the same which would result in completely blocking the only passage to the petitioner's property. The writ petitioner has urged that the order passed by the Deputy Commissioner (North) is arbitrary, illegal and wholly without jurisdiction.

7. The respondents have appeared in answer to the notice to show cause and have opposed the writ petition. It has been contended by the respondent Nos. 1 to 4 that consolidation proceedings of village Burari took place from 1976 -1982 and that Khasra Nos. 197/1 & 198/1 were agricultural land with old khasra number. During consolidation operations, Khasra No. 197/2 was carved out from Khasra No. 197/1 & 198/1 and allotted as Gram Sabha land. The respondents dispute that these khasras were rastas and that it was on account of an error and omission that these were referred as Gram Sabha Rasta in the revenue records. It has been admitted by the respondents that the action to correct the same was taken by the authorities pursuant to the complaint received from Shri Adesh Tyagi, respondent No. 5 herein. In order to support their contention that these khasras were never rasta/pathway, it has been submitted that if a piece of land is reflected as rasta, it is assigned as only one khasra number and never two khasra numbers as in the present case.

8. Mr. R.S. Tomar, learned Counsel appearing for the respondent No. 5, has

supported the stand of the respondent Nos. 1 to 4 and further contended that the officials of the respondents having created the revenue authorities, the only remedy available to the petitioner is by way of statutory appeal u/s 42 of the Consolidation Act, 1948.

9. I have heard learned Counsel for the parties and perused the available record. Whatsoever be the position, I find that the petitioners have taken a categorical stand that the only passage to his property is located on what has been reflected as Gram Sabha Rasta in the revenue entries for Khasra Nos. 197/1 & 198/1. While the respondent Nos. 1 to 4 in the counter affidavit have disputed that the same was a rasta (pathway), however, I find that there is no denial to the fact that this was the only passage to the property of the petitioners and that this land is vacant. There is also no contest before this Court to the fact that this was being used as "rasta" for the last 50 years. Furthermore, it is an admitted position that the revenue records have reflected these khasras as Gram Sabha Rasta. Khasra No. 197/1 has been referred as Rasta in the revenue records filed before this Court for the year 1985-86 and even in 2004-2005. In the copy of the Khatauni of 1993-94, Khasra No. 197/1 measuring as 0.7 bighas and 198/1 admeasuring 0.8 bighas have been reflected as Gram Sabha (Concrete Road & Rasta Jata). Again under the Girdawari in the year 2004-2005, Khasra No. 197/1 (007 bighas) and Khasra No. 198/1 (008 bighas) have been reflected as Gram Sabha Rasta Jata.

10. In my view, these revenue entries cannot be simply brushed aside as an error or omission or as being without any substance.

11. In the afore-noticed facts, it also cannot be contended that there would be no impact of the order on the present petitioner. In answer to query by the court, it has been pointed out that the main road for the area is located in Khasra No. 199. In case Khasra Nos. 197/1 & 198/1 are blocked, there is no access to the property of the petitioner inasmuch as land of Khasra No. 198/2 falls between the petitioner's plot and the road on Khasra No. 199.

12. The grievance of the petitioner is that he was never heard and permitted to place the correct facts before the Deputy Commissioner (North) whose order is, therefore, claimed to be without jurisdiction and in violation of the principles of natural justice.

13. I find force in this contention. Perusal of the respondent's notings dated 30th March, 2006, 3rd April, 2006 & 20th April, 2006 in the concerned files contains an admission that the subject land has been shown as the passage in the revenue records. The notings also show that the respondent No. 5 joined the complainant in their considerations. No efforts have been made to join the petitioner and it would appear to verify the position on the site.

14. In this background, the grievance of the petitioners who are only seeking an opportunity to be joined in the consideration by the respondent and an opportunity of hearing is certainly, not without merit. The rights of the petitioners

being effected, the petitioners are entitled to make representation and to be heard in the consideration by the respondents.

15. This writ petition is allowed. The order dated 8th June, 2006 passed by the learned Deputy Commissioner (North), respondent No. 2, is hereby set aside. A direction is issued to the respondent No. 2 to issue notice afresh to the concerned parties including the petitioners who shall be afforded an opportunity to make written and oral representation before passing a speaking order afresh in the matter.

16. Pending consideration of the matter by the respondent No. 2, the passage/rasta of the petitioner over Khasra Nos. 197/1 & 198/1 shall not be interfered with.

This writ petition is allowed in the above terms.