

(2010) 07 DEL CK 0133

In the Delhi High Court

Case No : Writ Petition (C) No. 4687 of 2010 and C.M. No's. 9270-72 of 2010

Bhagat Singh and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Delhi Land Reforms Act, 1954 — Section 11(1), 154, 154(1), 16, 7

Citation : (2010) 07 DEL CK 0133

Hon'ble Judges : Valmiki J Mehta, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Ram Singh Soni, for the Appellant; Neeraj Chaudhari, for R-1, Najmi Waziri, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.

CM No. 9271/2010

Allowed subject to just exceptions.

WP(C) No. 4687/2010

1. The petitioners have filed the present writ petition under Article 226 of the Constitution of India claiming that their forefathers were in exclusive, constructive and actual physical possession of part of Khasra No. 865 measuring 102 Bighas and 9 Biswas (Abadi) forming part of the Revenue Estate of Village Bhaati Kalan. Out of the total land, the petitioners claim rights in respect of 72 Bighas and 9 Biswas arising much prior to the Delhi Land Reforms Act, 1954 (? the said Act? for short) coming into force. The petitioners allege that R-1 and R-2 came to demolish a part of the structure on the land in question on 28.06.2010 but by physical resistance the petitioners and the other villagers were able to prevent R-1 and R-2 from taking any action. The petitioners preferred Civil Writ Petition No. 4677/2010 under Article 226 of the Constitution of India seeking

relief of protection of their properties, but this writ petition was dismissed on 09.07.2010 by a speaking order. The said speaking order has not been placed on record and thus we are unaware of the reasoning of the dismissal of the earlier writ petition.

2. Now the present writ petition has been filed seeking quashing of the Notification dated 04.04.1996 published in the Delhi Gazette in terms whereof the land of the Gaon Sabha falling in the "Ridge" area was declared as surplus land and excluded from vesting in the Gaon Sabha. It would be appropriate to reproduce the Notification which reads as under:

Part IV

Notifications of the Departments of the National Capital Territory of Delhi Administration other than Notifications included in Part-I

Government of National Capital Territory Of Delhi

Revenue Department

Notification

Delhi, 2 April 1996

No.F1(29)/PA/DC/96 - Whereas the Supreme Court of India in IA Nos. 18 and 22 in Writ Petition No. 4677/1985 M.C. Mehta v. Union of India and Ors. in their orders dated 25.01.1996 and 13.03.1996 have directed the un-cultivated surplus land of Gaon Sabha falling in "Ridge" may be excluded from vesting in Gaon Sabha u/s 154 of the Delhi Land Reforms Act, 1954 and made available for the purpose of creation of Reserved Forest.

Now therefore in exercise of powers conferred u/s 154 of the Delhi Land Reforms Act, 1954 (8 of 1954), the Lieutenant Governor of National Capital Territory of Delhi, hereby declares the cultivated lands of Gaon Sabha specified in column III and Annexure-A to N annexed hereto, situated in Southern Range in respect of Villages mentioned in Column II of table given below as surplus land and excludes the same from vesting in Gaon Sabha and further places the said land at the disposal of Forest Department of Govt. of National Capital Territory of Delhi.

Annexure-K (1 to 7 pages)

Villae Bhatti, Tehsil Mehrauli, Gaon Sabha Land Under Ridge Notified Area

Khasra No. 1 Area Remarks 1865 102-9 Abaadi

Total 11101-19

3. It is thus apparent to us from the aforesaid Notification that it is in pursuance to the orders of the Hon"ble Supreme Court that uncultivated surplus land falling in the "Ridge" area was declared as surplus and excluded from vesting in the

Gaon Sabha being placed at the disposal of the Forest Department.

4. Learned Counsel for the petitioners submits that while in other villages after the declaration of land as Abadi Area, additional lands were declared as extended abadi area but no such exercise was undertaken in the case of the petitioners' village and thus the requirement of the village has not been taken into account while declaring the land surplus in terms of Section 154 of the said Act. The submission thus is that the exercise in pursuance to proviso to Section 154(1) has not been carried out. Section 154(1) reads as under:

154. Vesting of certain lands etc, in Gaon Sabha.-

[(1)] On the commencement of this Act-

(i) All lands whether cultivable or otherwise, except land for the time being comprised in any holding or grove,

(ii) All trees (other than trees in a holding or on the boundary thereof or in a grove or abadi) [(Note: Ins. by Section 16 of Delhi Act of 1956) or planted by a person other than a proprietor on land other than land comprised in his holding],

(iii) Public wells,

(iv) Fisheries,

(v) Hats, bazaar and meals, except hats, bazaar and meals held on land to which provisions of clauses (a) to (c) of Sub-section (1) of Section 11 apply,

(vi) Tanks, ponds, water channels, pathways and abadi sites,

(vii) Forest, if any.

Situate in a Gaon Sabha Area, shall vest in the Gaon Sabha :

Provided that if the uncultivated area situate in any Gaon Sabha area is, in the opinion of the Chief Commissioner, more than the ordinary requirements of the Gaon Sabha, he may exclude any portion of the uncultivated area from vesting in the Gaon Sabha , he may exclude any portion of the uncultivated area from vesting in the Gaon Sabha under this section and may make such incidental and consequential order as may be necessary.

5. We asked the Learned Counsel for the petitioners to show us the documents by which his forefathers or they came into settled lawful possession of the land in question which belonged to the Gaon Sabha. There is no such document on record. This question was posed as Gaon Sabha land is for the collective enjoyment of the village and there is no right in any individual to occupy the land unless such an allotment is made by the Gaon Sabha. The Gaon Sabha land is thus not meant for individuals for their own enjoyment and the vesting of the land in Gaon Sabha is as per Section 7 of the said Act. The significance of the said Act coming into force was that all lands of common utilities which were owned by the proprietors of villages and which were commonly used by the

villagers were vested in the Gaon Sabha and proprietors were divested of their ownership. As per Section 154(1)(vii) of the said Act, all the forest land situated in a Gaon Sabha area shall vest in the Gaon Sabha. The proviso to Section 154(1) of the said Act refers really to the uncultivated area situated in Gaon Sabha area and the same being more than the ordinary requirement of the Gaon Sabha may be excluded from vesting in the Gaon Sabha.

6. We are of the considered view that no further exercise was necessary to be carried out by the R-1 and R-2 in case of such Gaon Sabha land which was actually part of "Ridge" area and it is with the objective of protecting the "Ridge" area that the land in question which forms part of the "Ridge" area was declared surplus and was placed at the disposal of the Forest Department of the Govt. of NCT of Delhi for creation of Reserved Forest.

7. In our considered view, the petitioners are only encroachers on Government land who are seeking to prevent vesting of the land in question with the appropriate Government authority and possibly physically preventing the Government from taking over possession of the same. The petition has been filed 14 years after the notification in question was issued and the only reason given in this regard is that the petitioners had no knowledge of the same.

8. Learned Counsel for R-1 and R-2 states that the forest area is being fenced and 80 per cent of the work is complete, but physical resistance is being faced from people of the villages - Bhatti, Dera and Maandi. It is also stated that a similar issue was raised in WPC No. 4362/2007 Nav Yuwak Gram Vikas Samiti v. Govt. of NCT of Delhi and Ors. decided on 27.08.2009, in respect of three of the other villages. The LPA No. 579/2009 filed against that order also really did not succeed, but the original petitioners were given liberty to approach the Supreme Court for any clarification, if they so desired.

9. We find the present writ petition is a gross abuse of the process of Court and the same is dismissed with costs of Rs. 10,000/-.

CM No. 9270/2010 (for Stay)

CM No. 9272/2010 (for Appointment of LC)

Dismissed.