

(2003) 07 DEL CK 0107
In the Delhi High Court
Case No : CW No. 988 of 1978

Bhagwat and Others

APPELLANT

Vs

Lt. Governor of Delhi and Others

RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Delhi Land Holdings (Ceiling) Act, 1960 — Section 20, 3(4), 6, 6(3), 9

Citation : (2003) 6 AD 665 : (2003) 70 DRJ 444

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Ramesh Chandra and Ghanshyam Vashisht, for the Appellant;
Vikram Nandrajog, for the Respondent

Judgement

Badar Durrez Ahmed, J.—The order impugned in the present petition is an order dated 22.2.1978 passed by the Lt. Governor in a Revision Petition u/s 20 of the Delhi Land Holding (Ceiling) Act, 1960 (hereinafter referred to as the said Act). The Revision Petition had been preferred by the petitioner against the gazette publication dated 1.5.1976 under Para IV of the Delhi Gazette u/s 6(3) of the said Act declaring excess land of Shri Amar Singh in Village Ali, Delhi. The petitioners in the present petition are the legal representatives of late Shri Amar Singh.

2. In the impugned order dated 20.2.1978 it is noted that upon the filing of the Revision Petition u/s 20 of the said Act, the respondents therein had raised a preliminary objection with regard to the maintainability of the Revision Petition. It was the contention of the respondents that the petitioners have filed the Revision Petition u/s 20 without first exhausting the remedy of filing objections before the Deputy Commissioner u/s 9(1) of the said Act. The Lt. Governor found that there was force in the contention of the counsel for the respondent therein and he concluded as under:-

"I am firmly of the view that without the remedy available u/s 9(1) has (sic) been first exhausted, the revisionary powers of this Court u/s 20 cannot be

invoked."

3. In this regard it would be relevant to set out the provisions of Section 9(1) and (2) as well as Section 20(1) and (2) which are as under:-

"9. Publication of the final list and consequences thereof-(1) Any person aggrieved by an entry in the list published under Sub-section (3) of Section 6 may, within thirty days from the date of publication thereof in the Official Gazette, file objections thereto before the Deputy Commissioner:

Provided that the Deputy Commissioner may entertain the objection after the expiry of thirty the said period of days, if he is satisfied that the objector was prevented by sufficient cause from filing the objection in time.

(2) The Deputy Commissioner or any other officer authorised in this behalf by the Chief Commissioner may, after considering the objections and after giving the objector or his representatives an opportunity of being heard in the matter, approve or modify the list."

"20. Revision - (1) The Chief Commissioner may, on an application for revision made to him or otherwise call for the record of any proceeding before, or dispose of by, the competent authority or the Deputy Commissioner or any officer authorised by the Chief Commissioner under Sub-section (2) of Section 9.

(2) No order varying the decision of the competent authority or the Deputy Commissioner or revising the list published u/s 9 which prejudicially affects any person shall be made without giving him an opportunity of being heard."

From the scheme of the Act it appears that the procedure for determining excess land is set out in Section 6 thereof. u/s 6(3) the Competent Authority is required to prepare a list in the prescribed form containing the particulars of excess land etc. determined by him under Sub-section (1) of Section 6 and he is further required to cause every such list to be published, inter alia, in the official gazette. By virtue of Section 9(1) any person aggrieved by an entry in the list so published may within thirty days from the date of publication, file objections thereto before the Deputy Commissioner. Thereafter, under Sub-section (2) of Section 9 the Deputy Commissioner or any other officer authorised in this behalf by the Chief Commissioner (now, Lt. Governor) may, after considering the objections and after giving the objector or his representatives an opportunity of being heard in the matter, approve or modify the list. Under (1), it is clearly indicated that the Chief Commissioner (now Lt. Governor) may, on an application for revision made to him or otherwise, call for the record of any proceedings before, or disposed of by, the competent authority or the Deputy Commissioner or any officer authorised by the Chief Commissioner under Sub-section (2) of Section 9. It is clear that the Lt. Governor may either on an application for revision or otherwise entertain a revision in respect of any proceedings either pending or disposed of by the competent authority or the Deputy Commissioner or an officer authorised under Sub-section (2) of Section

9. From this, it is clear that an order passed by the Competent Authority u/s 6 including the publication of list under Sub-section (3) of Section 6 pursuant to such order could also be the subject matter of a revision u/s 20. It is nowhere indicated in the Act that before a revision petition u/s 20 is filed, the person aggrieved must first exhaust the remedy provided under Sub-section 1 of Section 9 of the Act. Any person aggrieved by the publication of the list u/s 6(3) may either pursue the remedy u/s 9 or if he feels that there are gross jurisdictional errors prefer a Revision Petition u/s 20.

4. In the present case, the petitioner has raised various issues with regard to the very jurisdiction of the Competent Authority in passing the order u/s 6. In the grounds taken in the Revision Petition as well as in the present writ petition the petitioner has specifically pleaded that the Competent Authority has to come to a determination u/s 6 after he holds an inquiry "in such manner as may be prescribed". It is the contention of the learned counsel for the petitioner that the manner has not been prescribed by the Rules for holding such inquiry and as such, this is a question which relates to the jurisdiction of the Competent Authority in passing any order u/s 6. Similar argument has been made with respect to the provisions of Section 3(4) where the learned counsel has pointed out that neither the Authority nor the manner prescribed has been indicated. These are, according to the learned counsel for the petitioner, serious questions which go to the root of the matter and particularly relate to the jurisdiction of the Competent Authority in passing any order u/s 6 of the said Act. As such, a Revision Petition was the appropriate remedy and the same ought not to have been thrown out by the Lt. Governor at the threshold.

5. I find myself in agreement with the above submission of the learned counsel for the petitioner that the Lt. Governor ought to have considered the Revision Petition which had been preferred u/s 20 and to this extent the order is liable to be set aside. Mr. Vikram Nandrajog appearing on behalf of the Interveners who have filed CM 738/1999 for intervention was also heard and he provided able assistance to this Court. It is Mr. Nandrajog's contention that apart from the question of jurisdiction the Lt. Governor also considered the case on merits and in this connection he made a reference to paragraphs 4, 5 and 6 wherein, he submitted that, it was categorically mentioned that the petitioner had requested that they be given one more opportunity to exercise their choice for retention of the Kila numbers within the ceiling limit. Based upon this, it was Mr. Nandrajog's contention that the petitioner had accepted that there was excess land and that they merely sought for another opportunity for exercising the choice of retention. He also referred to the fact that the Competent Authority had given several opportunities to the Petitioner to exercise their choice with regard to the retention of land. However, the same had not been exercised or availed of. It is on the basis of this that the Lt. Governor had declined this prayer of the petitioner also. It is, Therefore, the submission of the learned counsel appearing on behalf of the Interveners that nothing further survives in this petition and it ought to be dismissed.

6. I have examined the impugned order dated 22.2.1978 and find that essentially the petition was dismissed on the ground that the petitioner ought to have first exhausted the remedy u/s 9(1) of the said Act. It appears to me that had the Lt. Governor not come to this view he would have examined the case on a different footing altogether and would have then examined the objections of the petitioner with regard to the jurisdiction of the Competent Authority in passing the order u/s 6 of the said Act. Such an examination is not apparent from the impugned order. Moreover, it appears that the question of another opportunity being granted to the petitioner to exercise their option for retention of particular land within the ceiling limit was an alternative plea on the part of the petitioners and could not be taken as an admission by them that they indeed had excess land. This is further clear from the fact that right from the Revision Petition as well as the present writ petition they have consistently taken the objection that they do not hold any excess land. Whether they hold any excess land or not has to be determined after considering all the facts and circumstances of the case. This has not been done in the Revision Petition which was preferred before the Lt. Governor.

7. In view of the aforesaid facts and circumstances and discussion the impugned order of the Lt. Governor is set aside. The matter is remanded to the Lt. Governor for a decision afresh on the revision petition u/s 20 filed by the petitioners.

8. No orders as to costs.