
(2014) 08 DEL CK 0087
In the Delhi High Court
Case No : Writ Petition (Civil) 1693/2008

Daya Kishan

APPELLANT

Vs

Tehsildar - Najafgarh

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Citation : (2015) 214 DLT 292

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Atul Bandhu, Advocate for the Appellant; V.K. Tandon, Advocate for the Respondent

Judgement

Hima Kohli, J.

RP No.500/2009 & CM No.10216/2013 (for condonation of delay)

1. A Review Petition has been filed by the respondent/revenue authorities praying inter alia for review of the order dated 7.1.2009. Accompanying the said application is an application for condonation of delay of 278 days.
2. Briefly stated, the facts of the case are that the petitioners had filed a petition praying inter alia for issuance of directions to the respondent/revenue authorities to undertake demarcation of the land situated in Khasra No. 656 & 657 in Village Sarangpur, New Delhi, in accordance with the records available.
3. On 5.3.2008, learned counsel for the petitioners had stated that he had made several representations for demarcation, but without any success. On the aforesaid date, notice was issued in the writ petition and a counter affidavit was directed to be filed by the respondents. However, the counter affidavit was not filed. On 25.8.2008, learned counsel for the respondent/revenue authorities had stated that the counter affidavit was filed two days earlier, but the same was not on record. Counsel for the petitioner had also submitted that he had not received a copy of the same. On the assumption that the counter affidavit would be

placed on record, directions were issued to the petitioners to file a rejoinder and the matter was adjourned to 7.1.2009.

4. On 7.1.2009, counsel for the respondent/revenue authorities submitted that he had no objection to the prayer made by the petitioners for undertaking demarcation of Khasra No. 656-657 situated in village Sarangpur, New Delhi, being allowed. In view of the aforesaid submission made on behalf of the respondent/revenue authorities, the writ petition was disposed of with directions issued to the respondent/revenue authorities to carry out demarcation of the subject Khasra numbers in the presence of the petitioners after giving written intimation to them of the date fixed for the said purpose.

5. Subsequently, the respondent/revenue authorities filed two applications, i.e., CM No. 16403/2009 for seeking condonation of delay in filing the review petition and CM No. 16404/2009 for seeking condonation of delay in re-filing CM No. 16403/2009. Vide order dated 11.11.2011, CM No. 16404/2009 was allowed and the delay in re-filing CM No. 16403/2009 was condoned. As regards CM No. 16403/2009, whereunder the respondent/revenue authorities sought condonation of delay of 278 days in filing the review application, the same was adjourned to enable learned counsel for the respondent/revenue authorities to file a better affidavit in support of the averments made in the said application.

6. Subsequently, in July, 2013, the respondent/revenue authorities filed CM No. 10216/2013 praying inter alia for condonation of delay in filing the review petition. On 16.7.2013, notice was issued to the non-applicants/petitioners on the said application. On 17.1.2014, counsel for the petitioners had entered appearance and sought time to file a reply to the application. However, reply was not filed despite the last opportunity granted to the petitioners, vide order dated 10.3.2014, passed by the Registrar. On 22.4.2014, as learned counsel for the petitioners submitted that the averments made by him in CM No. 977/2014 may be treated as a reply to the review application, the review petition and CM No. 10216/2013 have been placed before this Court for arguments.

7. Mr. Tandon, learned counsel for the respondent/revenue authorities, states that after the order dated 7.1.2009 was passed, efforts were made by the department to undertake demarcation of the subject land, but as the area was completely built-up, objections were raised by the residents to the demarcation proceedings. In these circumstances, the respondent/revenue authorities filed the review petition on 12.11.2009.

8. In the meantime, the Tehsildar, who was dealing with the case, was suspended on 12.11.2009 and as the facts of the present case was in his knowledge, the other officers of the department remained unaware of the status of the case. It is submitted that only after the petitioners approached the respondent/revenue authorities to remind them about the order passed on 7.1.2009, was the Tehsildar, who was suspended in the meantime, contacted and the file traced. In this duration, the elections of the Lok Sabha were declared and most of the

officers of the revenue department were deputed on election duty, which caused further delay in filing the condonation of delay application.

9. Learned counsel for the non-applicants/petitioners fairly states that he does not wish to oppose CM No. 10216/2013 filed for condonation of delay and instead, requests that the review petition may be heard and decided on merits.

10. Though, the explanation offered by the respondent/revenue authorities in CM No. 10216/2013, for seeking condonation of delay, is rather sketchy and devoid of all the material facts, in the interest of justice, the same is allowed and the delay of 278 days in filing the review petition is condoned.

11. By way of the present Review Petition, the respondent/revenue authorities seek review of the order dated 7.1.2009 on the ground that the petitioners had filed a misconceived petition seeking demarcation of land situated in Khasra No. 656 & 657 in Village Sarangpur, New Delhi, when it was well within their knowledge that as on date, there did not exist any such Khasra numbers. Learned counsel for the respondent/revenue authorities submits that the land situated in Village Sarangpur, New Delhi is comprised of single Khasra number, i.e., Khasra No. 38 and this fact was well within the knowledge of the petitioners as is borne from a perusal of the averments made in the writ petition, particularly para 3 thereof, wherein the petitioners have categorically stated that the old Khasra numbers of the Village were merged into one Khasra number at the time of the last settlement that was carried out in the year 1908-09 and the whole of the abadi deh of the Village was given one Khasra number, i.e., Khasra No. 38.

12. Learned counsel for the respondents/revenue authorities states that records reveal that initially in the year 1908-09, the abadi deh of the Village was given one number, i.e., Khasra No. 773 and all the separate Khasra numbers were merged into the said Khasra number. Again, before the consolidation, the said Khasra number was changed into Khasra No. 179 and in the year 1971-72, the aforesaid Khasra No. 179 was changed into Khasra No. 38.

13. It is submitted that a perusal of the revenue records indicates that prior to merging of the above Khasra numbers into Khasra No. 773, later on into Khasra 179, and finally into Khasra No. 38, land situated in Khasra No. 157 was a passage and was Shamlat-deh land and not the personal property of any of the petitioners. It is thus stated that the land in question cannot be demarcated as Khasra No. 656 & 657 stand merged in Khasra No. 773, then in Khasra No. 179 and lastly in Khasra No. 38, which is how it stands today. In other words, the entire abadi deh of Village Sarangpur, New Delhi, is comprised in present Khasra No. 38 and it is virtually impossible for the respondent/revenue authorities to carry out the demarcation of the entire Khasra No. 38.

14. Counsel for the petitioners submits that despite merging of the Khasra numbers of the abadi deh into a single Khasra No. 38, the petitioners had remained owners in possession of a plot of land measuring 250 sq. yards

(approx.) in the Village through their predecessor-in-title, who were residing there ever since the year 1908-09, i.e., prior to the settlement. He submits that in the year 1978, the petitioners had raised a residential house on the subject land. In the year 1997, the petitioners' paternal uncle filed a suit for partition against their father, registered as CS(OS)No.1410/1997, which was finally disposed of and a decree was passed, on the basis of which, all the parties were allotted separate portions of the residential plot.

15. Learned counsel for the petitioners states that the petitioners had filed the present petition seeking demarcation of Khasra No. 656 & 657 for the reason that one Mr. Kanahiya, who was holding a parcel of land across the land occupied by the petitioners, had started to threaten the petitioners and their predecessors-in-interest with demolition and had made false complaints that the petitioners were trying to encroach upon the passage in the Shamlat-deh land comprising of Khasra No. 657. Later on, one Shri Om Prakash had approached Shri Kanahiya and purchased his land and then he started to extend threats to the petitioners. As a result, the petitioners decided to file the present petition seeking demarcation of the common passage.

16. Counsel for the petitioners states that in the year 2010, Shri Om Prakash filed a writ petition, registered as WP(C)No.6351/2010 praying inter alia that MCD be directed to construct a pucca gali with drainage in place of a kachha rasta as existed in village Sarangpur, New Delhi, wherein allegations of blocking/encroachment of land were levelled against the petitioners' father. Vide order dated 23.2.2011, the said petition was disposed of with an observation that it is for the MCD along with the revenue authorities to determine the nature and extent of the rasta. The Court also declined to entertain the application for impleadment filed by the petitioners herein as respondents in the aforesaid writ petition and directed the MCD to pave the kachha rasta as per demarcation.

17. Counsel for the respondent/revenue authorities submits that only MCD was impleaded in WP(C)No.6351/2010 and the revenue authorities were not a party to the said proceedings and if the MCD seeks certain clarifications from the department, then the same shall be provided but the respondent/revenue authorities do not have any role to play in carving out rasta as it is within the jurisdiction of the civic authorities to take steps in that regard.

18. In view of the aforesaid position that has emerged only after the review petition has been filed by the respondent/revenue authorities, it is deemed appropriate to recall the order dated 7.1.2009, whereunder the respondent/revenue authorities were directed to carry out demarcation of Khasra No. 656 & 657 situated in village Sarangpur, New Delhi for the reason that there do not exist any such Khasra numbers for the respondent/revenue authorities to undertake any demarcation proceedings and it is untenable for the petitioners to seek demarcation of Khasra No. 38, which comprises of the entire village Sarangpur. Had this fact been pointed out by the learned counsel for the petitioners on 07.01.2009, then such a direction would not have been issued. As

for the kaccha rasta existing on the Shamlat-deh land in the Village (old Khasra No. 657), if the petitioners have any grievance with regard to encroachment on the said passage, then it is for them to approach the civic authorities for seeking clearance of the said encroachment, in accordance with law.

19. The review petition is allowed and disposed of.