

(2002) 11 DEL CK 0043

In the Delhi High Court

Case No : Civil Writ Petition No. 2246/93

Kamal Kant Baporia

APPELLANT

Vs

G.S. Kirari Suleman Nagar and Others

RESPONDENT

Date of Decision : 12-11-2002

Acts Referred:

Delhi Land Revenue Act, 1954 — Section 81, 81(1), 82

Citation : (2005) 4 RCR(Civil) 187

Hon'ble Judges : B.N. Chaturvedi, J;B.A. Khan, J

Bench : Division Bench

Advocate : Amrita Sanghi, Rachna Jain and Siddharth Khattar, for the Appellant;
None, for the Respondent

Judgement

Khan, J.—When the matter was taken up on 18.9.2002, Mr. Rajesh Ranjan, Advocate had taken notice for Respondents and sought adjournment which was granted. Respondents have again gone unrepresented today but that does not detain us to dispose of this petition which has remained pending since 1989.

2. Petitioner claims to be the owner of land measuring one bigha comprising Khasra No. 1222 in the Revenue Estate of Village Kirari Suleman Nagar, Delhi allegedly purchased by him from one Ramesh Sharma. He says that he was physically handicapped and minor at the relevant time when the land was purchased through his guardian. He could not naturally look after this and after he gained majority and tried to know its position, he was shocked to know that it was taken over by Gram Sabh pursuant to orders of Revenue Assistant dated 18.1.1989 passed u/s 81 of Delhi Land Revenue Reforms Act. he then inspected the revenue records and found that R-1-3 had not even bothered to serve any notice on him or his guardian which was a mandatory requirement. A case was registered under No. 1172/RA/87 u/s 81 of Delhi Land Reforms Act and the proceedings on 21.12.1987 and 17.2.1988 clearly shows that the notice could not be served on him. This notice was then ordered to be served through affixture for 27.4.1988 which could not be done for want of his address, though

his address recorded on Khatoni was the correct address. This was followed by order of dispossession dated 29.4.1988 u/s 81 which also was not served on him followed by order dated 18.1.1989 vesting the land in Gram Sabha (R-1). All this, according to him shows that the whole exercise was undertaken at his back and without any notice to him. He accordingly prays for quashing of this order and for directing respondents 1 & 2 to hand over the possession of the land to him and to amend the revenue record to show his name as its owner.

3. Respondents have contested petitioner's claim on several grounds. According to them he was using the land in question for the purpose other than agriculture and was to be evicted u/s 81 and 82 of the Act. It is doubted that he had given his correct address and in any case SDH and Revenue Asstt had tried their best to serve the requisite notice on him, which could not, however, be done because he has not furnished the proper address.

4. Record shows that at one stage report of revenue agency was also sought vide court order dated 23.3.94 on whether the surrounding land was subsequently allowed to be used for non-agriculture purposes perhaps to consider whether petitioners alleged action at the relevant time deserved any regularisation. Meanwhile status quo was ordered to be maintained on the land in question which admittedly is in the possession of Gram Sabha at present.

5. The only issue conversed by L/C for petitioner was that once respondents had admitted that no notice was served on petitioner before action was initiated against him and even during proceedings u/s 81, impugned order dated 29.4.1988 and 18.1.89 stood vitiated for being violative of Principles of Natural Justice. All that, Therefore, falls for consideration is whether there was any breach of the relevant provisions or Principles of Natural Justice to render the impugned orders invalid.

6. Sections 81 and 82 which are relevant for our purposes require to be reproduced for better appreciations of the contentions raised by petitioner.

Section 81:-

7. Ejectment for use of land in contravention of the provisions of the Act

(1) A Bhumidhar or an Asami shall be liable to ejectment on the suit of the Gaon Sabha or the landholder, as the case may be, for using land for any purpose other than a purpose connected with agriculture, horticulture, or animal husbandry, which includes pisciculture and poultry farming, and also pay equivalent to the cost of works which may be required to render the land capable of use for the said purposes.

(2) Notwithstanding anything contained in Sub-section (1), the Revenue Assistant also may, on receiving information or on his own motion, eject the Bhumidar or Asami, as the case may be, and also recover the damages referred to in Sub-section (1), after following such procedure as may be prescribed.

Section 82 Provides as under:-

Decree for ejectment u/s 81

(1) A decree for ejectment u/s 81 may direct the ejectment of Bhumidar or Asami from the whole or part of the holding as the court, having regard to the circumstances of the case, may direct.

(2) The decree shall further direct that, if the Bhumidhar or Asami repairs the damage within three months next after the decree, the same shall not be executed except in respect of costs.

8. A conjoint riding of these provisions shows that a Revenue Assistant could on his own or on information evict a Bhumidar or an Asami from the land if he was found for any purpose other than agriculture. He could also recover damages from him to restore the land to the agricultural use. He had also the power to stay execution of decree to enable Bhumidar or Asami to repair the damage within three months from the date of decree.

9. It is true that these provisions per se don't stipulate issue of notice to the Bhumidar/Asami concerned but such notice would have to be read in these because his property could not be taken at his back in violation of Principles of Natural Justice. He had a right to show in the proceedings taken against him that he had not committed any breach or the action alleged against him was justified.

10. The record in the present case shows that no notice of proposed action or of proceedings was served on petitioner, be that for his wrong address or whatever. It is no good to say that efforts were made to reach him. The fact remained that he was deprived of his land without any opportunity being granted to him to show whether or not he had used the land for non-agricultural purposes. The allegation against him was that he was constructing on the land. He could as well have proved that he was not so doing or that he would remove such construction within the prescribed time to restore the land for agriculture purpose.

11. For all this, impugned, orders, in our view become unsustainable and are set aside. While status quo as on today shall be maintained on spot, Respondent No. 2 is directed to take fresh proceedings in the matter under Sections 81 and 82 after notice to petitioner and allow him to have his say and then pass appropriate orders in the matter under law within two months of receipt of this order.

Petition is disposed of accordingly.