
(2007) 03 DEL CK 0039
In the Delhi High Court
Case No : WP (C) No. 4266 of 1995

Kishan Chand

APPELLANT

Vs

Gaon Sabha, Bharthal and Others

RESPONDENT

Date of Decision : 05-03-2007

Acts Referred:

Delhi Land Reforms Act, 1954 — Section 86A
Delhi Land Reforms Rules, 1954 — Rule 170

Citation : (2007) 95 DRJ 218

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Vikram Nandrajog, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—This writ petition seeks the quashing of (i) an order dated 11.7.1994 passed by the Sub-Divisional Magistrate Punjabi Baugh/Revenue Assistant Najafgarh in Case No. 79/1994 (ii) orders dated 14.3.1995 and 13.10.1995 passed by the Additional Collector Delhi in Appeal No. 20/1994 and (iii) order dated 31.10.1995 passed by the Financial Commissioner Delhi in Case No. 236/1995 - CA.

2. The petitioner is a resident of Village Bharthal in Delhi. The petitioner was an allottee of a residential plot bearing Khasra No. 347 measuring 1 bigha situated within the extended Lal Dora of Village Bharthal allotted to him during the consolidation of holding proceedings which took place in the year 1982. The plot of land allotted to the petitioner is enclosed by a 3 gather wide phirni on the western and southern side whereas on the eastern side, a passage runs from North to South touching the petitioner's plot. On the northern side it is adjacent to plot No. 348 which belongs to one Tirath Ram. The petitioner had fenced his land, Plot No. 347, with a barbed wire fencing. He had constructed a puce room on the plot and obtained electricity connection.

3. The petitioner was issued an extended abadi certificate dated 30.9.1992 in respect of Plot 347 by the SDM Punjabi Bagh. Towards the east side of the petitioner's Plot No. 347, beyond the phirni, there exists land comprising Khasra No. 184 belonging to the Gaon Sabha. In fact land in Khasra No. 184 is shown as a Johar i.e. a pond.

4. During consolidation proceedings, all the plots in the village were demarcated including the boundaries of Khasra No. 347 and 184. The southern length of Khasra No. 2184, according to the petitioner, was measured and recorded as 71 gather s. He has produced a massive i.e. a map (annexed as Annexure P-11 with the rejoinder affidavit) in support of this contention.

5. According to the petitioner in 1994 he was issued a notice by the SDM u/s 86A of the Delhi Land Reforms Act, 1954 (DLR Act) asking the petitioner to appear on 24.3.1994. On contacting the office of the SDM the petitioner came to know that according to the respondent authorities he was supposed to have encroached upon both the phirni and the Johar belonging to the Gaon Sabha and accordingly action to eject him from the encroached portions was being contemplated.

6. There were apparently two demarcation reports one dated 1.3.1994 and the other dated 17.6.1994. The petitioner states that the first report dated 1.3.1994 was made behind his back. Even the second one he says was made in contravention of the law because the southern side of Khasra No. 184 was taken to be 76 gather instead of 71gather and no evidence was allowed to be led by the petitioner. Therefore, the petitioner refused to sign the second demarcation report.

7. The petitioner further states that without recording evidence as contemplated by Rule 170 of the Delhi Land Reforms Rules 1954 ("Rules"), an order dated 11.7.1994 ejecting the petitioner from 6 bids was of Gaon Sabha land in Khasra No. 184 and the adjoining phirni came to be passed. According to the SDM, there was a rasta on the southern south side of Plot No. 347 belonging to the petitioner. He held that the excess land of width of 4 gather ought to be left alongside the phirni and that leaving a 4 gather wide strip of land between the two plots, i.e. between the plot on the northern side and the petitioner's plot, would be of no use and open to encroachment.

8. The petitioner's appeal against the order dated 11.7.1994 passed by the SDM, was dismissed by the Additional Collector by an order dated 13.10.1995. According to the Additional Collector, the area under dispute was an excess area in possession of the petitioner and it had "resulted in the blockage of metalled road being constructed over the phirni of the village. In case this area is allowed to remain in the possession of the appellant, the road at this point will be in a zig-zag manner and there is every possibility that it may become an accident prone area in plying the buses over the road, which will not only be harmful to the appellant but also to the villagers and the interest of the entire village is likely to be jeopardized."

9. The further revision petition filed by the petitioner was dismissed by the Financial Commissioner on 31.10.1995. The Financial Commissioner entirely went by the two demarcation reports the second of which, was prepared in the presence of the petitioner. The Financial Commissioner concluded that the objection of the petitioner that the description of the land was not given in the notice was only a technical ground and since he had participated in the proceedings such objections stood waived.

10. On behalf of the petitioner, Mr. Vikram Nandrajog, Advocate, first referred to the abadi certificate issued to the petitioner which clearly shows that the petitioner's land was bound on three sides by a phirni and on the northern side by the Plot No. 348 belonging to Tirath Ram. He then refers to the village Shajra which is at Annexure P-2 which also points to the same position. Mr. Nanrajog contends that the so-called demarcation carried out on the site was totally erroneous since the southern boundary of Khasra No. 184 was sought to be measured as 76 gather s and not 71 gather . Therefore the demarcation of Khasra No. 184 was sought to be extended towards South by 5 gather . In turn, the phirni was sought to be shifted on to the petitioner's land and the petitioner's land was sought to be shifted on the eastern side by 5 gather . The map filed along with the rejoinder as Annexure P-11 showed the southern boundary of Khasra No. 184 only to be 71 and not 76 gather . He also relies upon a demarcation report dated 28.4.1992 (which has been placed as Annexure P-12 with the rejoinder), which would go to show that when Khasra numbers 183 and 184 were measured, the fixed point was taken as the petitioner's land in Khasra No. 347 and this mentions the distance between the southwest corner and southeast corner of Khasra No. 184 as 71 gather . He says that in the light of the above clinching evidence concerning the measurements of the petitioner's Plot 347 and the Gaon Sabha land in Khasra No. 184, the orders passed by the SDM, the Additional Collector and the Financial Commissioner are plainly erroneous.

11. This matter was listed for final hearing on 10.1.2007 when none appeared for the respondent. After recording the contention of the petitioner's counsel, the matter was retained on board in the interests of justice although none appeared for the respondent. Again it was listed on 31.1.2007 when no one appeared for the respondent. It was finally heard on 1.2.2007 and again no one appeared for the respondent. Orders were then reserved after hearing counsel for the petitioner.

12. The first issue that arises for determination is whether the very basis upon which the demarcation proceeded in the instant case is tenable in law. It is seen from the overwhelming evidence placed on record by the petitioner that both in the abadi certificate and in the village Sharja which are placed as Annexure P-1 and P-2 to the writ petition the southern boundary of Khasra No. 184 is shown only to an extent of 7gather s. Importantly the petitioner's land at Plot No. 347 is shown as being surrounded on three sides by phirni and on the north by the

land belonging to Tirath Ram. If in fact it is correct that the petitioner had encroached upon any land and was possessing excess of 5 biswas, then obviously the road could not be abutting Plot No. 347 on the southern side. There seems to be also merit in the petitioner's contention that he was not permitted to lead evidence during the demarcation. The order of the learned SDM while referring to the demarcation report, does not make a mention of the fact that evidence was sought to be led and permitted to be led on behalf of the petitioner. On the other hand the order of the Additional Collector and the Financial Commissioner show that the petitioner had in fact refused to sign the demarcation report. In that view of the matter the contention of the petitioner that he was denied opportunity to lead evidence is credible and remains unrebutted.

13. Under Rule 170 of the Delhi Land Reform Rules before finalising a demarcation the objector must be given an opportunity to lead evidence. That has been explained by this Court to be mandatory in the decision in Anil Sagar Vs. Gaon Sabha Village and Others, On the strength of this decision, the petitioner rightly contends that in the instant case the demarcation cannot stand scrutiny in law since the petitioner has been denied an opportunity of leading evidence.

14. Two other documents referred to by the counsel for the petitioner also support the case of the petitioner. The first is a massive produced at Annexure P-11 which shows in Urdu lettering the extent of the southern boundary of Plot 184 to be 71 gather s and not 76 gather s as has been mentioned in the orders under challenge. The second document is a demarcation report prepared for measuring plot numbers 183 and 184 which refers to the petitioner's plot 347 as the fixed point. This is an official document which shows that the extent of the southern boundary of Plot No. 184 is 71 gather s. These two documents being part of official documents, ought to have been taken note of by the respondent authorities before rejecting the case of the petitioner. Had the petitioner been given an opportunity to lead evidence it is quite possible that he could have placed these documents in support of his claim that he had not encroached upon either the phirni or the pond. Unfortunately these documents do not seem to have been considered by the authorities below.

15. For all of the above reasons this Court is of the considered view that the impugned orders cannot be sustained in law and ought to be set aside. The matter will now be sent back to the learned SDM for once again determining the issue whether the petitioner has in fact caused any encroachment on any phirni or pond in the light of the evidence that has been brought on record. The learned SDM will consider the massive produced by the petitioner at Annexure P- 11 and also the demarcation report at Annexure P-12, hear any objections that the petitioner may have and pass a reasoned order. This exercise should be completed within three months from the date of receipt of this order.

16. If the petitioner is aggrieved by the decision of the SDM, he can avail of the

remedies available to him in law.

17. With the above directions the writ petition is allowed, the impugned orders are set aside and the matter is remanded to the learned SDM/ Revenue Assistant for proceeding in accordance with this judgment. The writ petition stands accordingly allowed.