

(2014) 10 DEL CK 0152

In the Delhi High Court

Case No : Writ Petition (Civil) No. 175/1997

Krishan Lal

APPELLANT

Vs

Financial Commissioner

RESPONDENT

Date of Decision : 15-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 2
Constitution of India, 1950 — Article 226, 227
Delhi Land Reforms Act, 1954 — Section 18, 18(2), 185, 185(4), 187
Transfer of Property Act, 1882 — Section 52, 56

Citation : (2014) 145 DRJ 622

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : S.N. Gupta and Shahil Dhawan, Advocate for the Appellant; R.P. Vats, Neelmani, D.V. Khatri and B.S. Maan, Advocate for the Respondent

Judgement

Suresh Kait, J.—Vide the present petition, petitioner seeks setting aside of the judgment and order dated 26.06.1995 passed by Shri Ramesh Tiwari, Additional Collector, Delhi; judgments and orders dated 19.12.1995 and 02.02.1996 passed by the Financial Commissioner, Delhi, in Second Appeal No. 174/95/CA and review petition bearing Case No. 9/96-CA respectively. Further seeks restoration of the judgment and decree dated 01.05.1995 passed by the Revenue Assistant/Settlement Officer (Consolidation), Delhi, by directing the respondents to comply with the orders dated 01.05.1995.

2. This case has a long history. Brief facts of the case are that in the year 1945, petitioner and one Shri Mithun were occupying tenancy in respect of land measuring 46 Bighas and 14 Biswas, situated in Village Holambi Khurd, Delhi. After coming into force of the Delhi Land Reforms Act, 1954 (hereinafter to be referred as "the Act"), the aforesaid tenants were illegally dispossessed in the year 1954-55 without following due process of law.

3. Thereafter, on 18.07.1955, petitioner filed an application under Section 18(2)

of the Act for regaining possession of the land in question against the recorded owners. The Revenue Assistant held that application was defective and accordingly dismissed the same vide its order dated 23.05.1958. Being aggrieved, petitioner filed an appeal before the Additional Collector, who dismissed the same vide order dated 17.03.1959. Thereafter, petitioner filed second appeal before the Chief Commissioner, Delhi, under Section 185(4) of the Act. Vide order dated 18.08.1961 while setting aside the impugned order dated 23.05.1958, the Chief Commissioner remanded the case back to the Revenue Assistant with directions to dispose of the same on merits.

4. Accordingly, the aforesaid application under Section 18(2) of the Act was taken up for consideration by the Revenue Assistant, which was contested by the respondents on various grounds. Based upon pleadings of the parties, following issues were framed on 29.01.1968 by Shri S.L. Malhotra, Revenue Assistant:-

"(i).....

(ii).....

(iii).....

(iv).....

(v).....

(vi) Is the applicant entitled to eject the defendants from Khasra number which was allotted to him in connection of proceedings in lieu of land in dispute.

(vii) Whether the Umrao Co-operative Farming Society being formed to defeat the right of the applicant under the provisions of the DLR Act.

(viii) Relief."

5. All the aforementioned issues, i.e., issue Nos. (vi), (vii) and (viii) were decided in favour of the petitioner and against the respondents by the Revenue Assistant by recording as under:-

"ISSUE NO. (VI)

The learned counsel for the defendants has again reiterated that the application of the petitioner is not competent as the land, the possession of which is claimed, did not exist at the time of the application. It has come on record that the respondents were allotted alternative plots of land in lieu of the original places of land as a result of Consolidation of Holdings. It is not settled law that if as a result of Consolidation of Holding new plots of land are given in lieu of the old ones held by a person the rights and liabilities attached to his earlier holding stand transferred to his new holding. If the tenants had the right to get back their pre-consolidation holdings right would ensure to their benefit even after consolidation and would be applicable to holding of the owner. In this connection the decision of Hon"ble High Court of Delhi dated 21.04.70 in case Mangat Vs. Phurdan (RA No. 264 D/64) refers. This issue is, therefore, decided in favour of

the petitioner and against the respondents.

ISSUE NO. (VII):-

It has come on record that Umrao Co-operative Farming Society had been formed by defendants No. 1 to 5 after this institution of application in the present case. There is nothing on record to suggest that the holdings of any person other than defendants No. 1 to 5 were pooled and the said society was broad-based so as to provide opening for other cultivators. Since the land in suit was being cultivated by the petitioner as a tenant, and by virtue of Section 18(2) of the DLR Act, the petitioner was entitled to regain his possession, its transfer to a co-operative society naturally defeated the rights of the applicant under the provisions of DLR Act. This issue, is therefore, decided in favour of the petitioner and against the respondents.

ISSUE NO. (VIII):-

In view of my findings given above I have no hesitation in holding that the petitioner Shri Krishan Lal is entitled to get back the possession of the land in suit to the extent of his share from the defendants u/s. 18(2) of the Act. As the land in suit was being jointly cultivated by the petitioner and Mithan immediately before the possession was taken by the defendants, the petitioner is entitled to get back the possession of the land to the 50% of the land total area. The total area of the land is 46 bighas and 14 biswas. The petitioner is, therefore, held to be entitled to get back possession of the area measuring 23 bighas and 7 biswas.

In view of the Consolidation of holding in the village some other Khasra numbers have been allotted to the respondents in lieu of the suit land. Let a copy of this order be sent to the Settlement Officer (Consolidation) who shall after consulting the Settlement record report as to which particular plots were to be given to the petitioner in exchange of the half share in the land in suit. His report shall also be accompanied by a Aksh Sizra Map and copy of card. Formal decree shall be prepared on receipt of the report of the Settlement Officer (Consolidation) and orders thereon."

6. Mr. S.N. Gupta, learned counsel appearing on behalf of the petitioner submitted that admittedly this order is final, however, the issue remains is that which land is to be given to the petitioner.

7. It is pertinent to mention here that aforesaid order dated 31.03.1971 has been confirmed by the Additional Collector, Delhi and the Financial Commissioner, Delhi vide orders dated 18.07.1977 and 22.06.1979 respectively.

8. Accordingly, Shri K.H. Sharangal, Settlement Officer (C)/R.A. vide its order dated 03.07.1985 recorded as under:-

"The decree holder in this case has filed an application for the execution of decree obtained by him from the court of R.A. in the case No. 16/69 decided on 31.3.71. All the appeals filed against order of the learned R.A. have since been

decided. However, during the course of consolidation proceedings in the Village Kh. No. have been changed. I have heard arguments of both the parties in this case. According to the learned counsel for the decree holder, the change in the Kh. No. have not materially affected on the rights of the decree holders as the decree has got to be executed against the property held by the judgment debtor and not on the person although in appeal between the decision of the court and today, the land has been alienated by the judgment debtor yet it hardly affects the rights of the decree holders. So far as the question of LRs of various parties and the jurisdiction of the court is concerned a decision to this effect has already been stressed that since the land has already been paying rent in the instant case the decree cannot be executed against the respondent Baljit.

I am not convinced with the arguments of the learned counsel for the respondents and order that decree holders be delivered possession in respect of land out of khata of the respondent Baljeet equivalent to 23-7 on which he was in possession prior to the initiation of consolidation proceedings since the judgment debtors is in possession in Khasra No. 24/5, 6, 15/1 total measuring 12 bighas 8 bis. which is in possession of the judgment debtor allotted to him in lieu of reconsolidation of Khasra No. 1 etc./203 min. As this area falls short of the total area in his possession, the decree holders to be compensation out of the khata of judgment debtor in the shape of Khasra No. 25/9 etc. 1-0, 25/10 (4-16), 25/1(5-2). The Judgment debtor is ejected from the land mentioned above and decree holder be given possession of the same to satisfy the decree passed by the R.A. as stated above. Compliance report be sent to the earliest."

9. Being aggrieved by aforesaid order, respondent No. 3 Baljit Singh (now deceased) filed a review petition bearing No. 199/1985-CA before the Financial Commissioner, Delhi wherein vide order dated 28.04.1986 held as under:-

"In view of the above discussion, it is hereby held that the respondent No. 1 Shri Kishan Lal should be given possession of land measuring 23 bighas and 7 biswas in lieu of land bearing Khasra number 1 etc./203 in terms of orders dated 31.3.1971 of the Revenue Assistant being confirmed in first appeal decided on 18.7.1977 and further confirmed in second appeal on 22.6.1979 out of the holdings of the petitioner and successors-in-interest of sarvshri Ram Swaroop and Jai Lal to the extent of 1/3rd share each after proper assessment of the valuation of pre-consolidation khasra number 1 etc/203. The last paragraph i.e. finding on issue No. 8 should be deemed to be decree for purpose of execution. The orders of the Settlement Officer (C)/Revenue Assistant is modified to the extent that he should first evaluate the land and thereafter deduct land out of the holdings of the petitioner and that of the successors-in-interest of sarvshri Ram Swaroop and Jai Lal to the extent of 1/3rd share each for being given to respondent No. 1 Kishan Lal. While dealing with the case, the Settlement Officer(C) should also call for the option of these persons to surrender the land to be given to Kishan Lal respondent in lieu of land held by him in khasra number 1 etc/203. In consequences of the above, the present case stands remanded to the

Settlement Officer(C)/Revenue Assistant for implementation of the above observations forthwith."

10. It is important to note, as submitted by learned counsel for the respondent Nos. 4 and 5 that Umrao was grandfather of Baljit Singh. The said Umrao was having three sons, namely, Sardar Singh, Ram Swaroop and Jai Lal. Respondent No. 3, Baljit Singh was son of Sardar Singh. Respondent Nos. 4 and 5 are the legal heirs of Ram Swaroop and Jai Lal, who challenged the order dated 28.04.1986 passed by the Financial Commissioner before this Court by way of W.P. (C) No. 463/87. The same was disposed of vide order dated 09.12.1987, whereby held as under:-

"C.M. No. 783/87 & C.W. No. 463/87

Counsel for the parties point out that only a short point is involved and the writ itself may be disposed of today.

This is a writ petition under Articles 226 & 227 of the Constitution of India seeking writ of certiorari or any other appropriate writ for quashing the order dated April 28, 1996, passed by Shri Gorakh Ram, Financial Commissioner, in Case No. 199 of 1985-CA being a revision petition under Section 187 of the Delhi Land Reforms Act, 1954. I need not reproduce all the facts because counsel for the parties appearing before me agree that the order dated July 30, 1986, of Sh. K.R. Sarangal, Settlement Officer, and the order dated April 28, 1996 of Shri Gorakh Ram, Financial Commissioner, be set aside and the matter be remanded back to the settlement officer (Consolidation) for compliance with the order made by Shri L.D. Gupta, the then Revenue Assistant, passed on March 31, 1971. The order was made by Shri L.D. Gupta, Revenue Assistant, under section 18(2) of the Delhi Land Reforms Act, 1954 and directions were given as contained in the last para of the order to the following effect:

"In view of the consolidation of holding in the village some other khasra numbers have been allotted to the respondents in lieu of the suit land. Let a copy of this order be sent to the Settlement Officer (Consolidation) who shall after consulting the Settlement record report as to which particular plots were to be given to the petitioner in exchange of the half share in the land in suit. His report shall also be accompanied by a shazra map and copy of card. Formal decree shall be prepared on receipt of the report of the Settlement Officer (Consolidation) and orders thereon."

It is admitted case now that these directions are never complied with by the Settlement Officer. Hence, the impugned order is vitiated with illegality. I allow the writ petition and quash the impugned orders mentioned above and remand the case back to the Settlement Officer (Consolidation) for deciding it afresh and he is directed to comply with the order of Shri L.D. Gupta after allowing opportunity of hearing to all the parties concerned which would include giving an opportunity to the parties to lead evidence and he shall deal with all the objections and submit his report to the Revenue Assistant concerned who will

pass the final decree in accordance with the order already made by him. The Settlement Officer should take steps to dispose of the matter within four months. The parties are directed to appear before the Settlement Officer concerned on January 5, 1988. The parties shall bear their own costs in this writ."

11. Thereafter, Shri M.K. Malha, Settlement Officer (Consolidation)/Revenue Assistant, Tis Hazari Court, Delhi vide order dated 01.05.1995 recorded as under:-

"From a perusal of the history of the case above, it would be noted out that the only thing to be complied by the Settlement Officer to look into the settlement work and determine as to which particular plots were to be given to Sh. Kishan Lal in exchange of 1/2 share in the land in suit.

Now in view of the directions of the Hon"ble High Court in C.W.P. No. 463/87 wherein the directions have been issued to the Settlement Officer for deciding the case afresh in order to comply with the order of Sh. L.D. Gupta. Accordingly. I have summoned the Consolidation record and directed the office Kanoongo to ascertain the value of Kh. No. 203/1 etc. measuring 23 Bighas 7 biswas of Holambi-Khurd and also I have directed the Office Kanoongo to carve out new Killa numbers equal to the value and quality of Khasra Nos. as follows as per value and quality equal to the value and quality of Khasra No. 203/1 etc. as follows:-

Khasra No. Ordinary area

I, therefore, pass the order that the position of Killa No. 24/5, 6, 15/1, 25/1, 25/9, 25/10, 24/7 mentioned above be handed over to Sh. Kishan Lal applicant.

Necessary directions be carried out accordingly. The name of the applicant Kishan Lal be entered in revised record."

12. The aforesaid order dated 01.05.1995 was challenged by respondent No. 1 Rajender K. Gupta and respondent No. 2 Kanta Gupta, before Shri Ramesh Tiwari, Additional Collector, Delhi, vide Appeal No. 72/95, whereby held as under:-

"13. I have heard the counsels and gone through their written arguments as well as the case files. I am of the opinion that in the light of the High Court order referred to above, all the other orders except the order passed by Sh. L.D. Gupta, the then RA dated 31.3.1971 have come irrelevant. After the perusal of the said order of Sh. L.D. Gupta, I find that the same was against the defendants i.e. the present resp. nos. 2, 3 & 4. It implies that the land to be given to the present resp. no. 1 should have been taken from the defendants i.e. the present resp. nos. 2, 3 & 4 in equal shares whereas by virtue of the impugned order, the liability of giving land to resp. no. 1 has been fixed upon the appellants who purchased the land, the subject matter of the present appeal, from the resp. no. 2. It would be worth mentioning here that the land in question is the land other than the land which was in dispute under the proceedings u/s. 18(2) of the DLR

Act, 1954. So far as the question of lis pendence is concerned, it applies to Smt. Hardei who was declared bhoomidar in r/o land bearing kh. no. 1/203 vide order dt. 28.2.70 during the pendency of the proceedings u/s. 18(2) of the said Act. so, if at all, any land that is required to be given to resp. no. 1, it should be the land of Smt. Hardei or in the alternative it should be the land carved out from the joint holdings of resp. no. 2 to 4. Since Sh. Baljeet resp. no. 2 is no more and his rights have been inherited by his LRs namely Sh. Jaipal S/o. Sh. Baljeet Singh, 1/3rd share of land is required to be taken from LRs of resp. no. 4. There is no reason to take possession of any land belonging to the appellants as their part of the agricultural land is not a matter of dispute. It has come in their bhoomidari rights legally, after execution of proper sale deed. At present it is in their possession & a Farm House duly approved by M.C.D. exists there. The land is also mutated in their names. So far as the jurisdiction of the SO(c) exercising the powers of R.A. is concerned, I am of the considered view that the SO(c) can exercise the powers of RA in r/o those villages where consolidation proceedings are in operation. Herein this case, the consolidation proceedings in village Holambi Khurd have been completed long ago and thereafter this village falls in the jurisdiction of concerned R.A. Hence, I do not think that the SO(c) should have exercised the powers of R.A. also. Moreover, the Hon'ble High Court in this order as referred to above, has clearly directed the SO(c) to find out the alternative kh. nos. and send his report to RA for final order. Contrary to this, the SO(c) has himself passed the final order which means that the order of the Hon'ble High Court has not been properly complied with.

In view of my findings and discussions above, I hold that there are certain lapses in the impugned order and it warrants my interference. Consequently, I accept the appeal and set aside the impugned orders there is no need to interfere with the peaceful possession of the land of the appellants. I however, remand the case to the SO(c) to comply with the direction of the Hon'ble High Court wherein it has directed to decide it afresh as per the order of Sh. L.D. Gupta dt. 31.3.71 after allowing the opportunity of hearing & leading evidence to all the concerned parties. Consequently, SO(c) is directed to send a report to the concerned R.A. i.e., SDM (KWC) of the alternative kh. nos. in lieu of kh. no. 1/203 and other kh. nos. belonging to resp. nos. 2 to 4 so that the RA can pass a final decree in favour of Sh. Krishan Lal resp. no. 1. since there has been abnormal delay in carrying out the order of the Hon'ble High Court, SO(c) is directed to submit a report to the concerned RA i.e. SDM (KWC) within one month & concerned RA i.e. SDM (KWC) shall thereafter pass the final decree within one month...."

13. Mr. S.N. Gupta, learned counsel for the petitioner submitted that the above named respondent Nos. 1 and 2 (herein) were never party before any authority, therefore, the order dated 26.06.1995 had been passed without any basis and jurisdiction. The aforesaid respondents purchased the land in question from Smt. Hardei, mother of Baljit Singh, respondent No. 3 in the year 1985, vide sale deed dated 19.06.1985 whereas Revenue Assistant passed order on 31.03.1971 before execution of the aforesaid sale deed, hence, prior thereto no interest of

respondent Nos. 1 and 2 accrued, however, created their rights vide aforesaid sale deed dated 19.06.1985 just before the order dated 03.07.1985 passed by the Settlement Officer. At that point of time, there was no mutation, as claimed by the respondent Nos. 1 and 2, therefore, the Settlement Officer-cum-Revenue Assistant was to comply with the aforesaid order dated 31.03.1971 as the said order has attained finality.

14. Mr. S.N. Gupta, learned counsel further submitted that the order passed by the Statutory Authority is a decree. As claimed by the respondent Nos. 1 and 2, they purchased the land in question, however, without any mutation, which is no sale in the eyes of law.

15. Mr. B.S. Maan, learned counsel for the respondent Nos. 4 and 5, i.e., legal heirs of Ram Swaroop and Jai Lal, while supporting the case of the petitioner submitted that the order dated 28.04.1986 passed by the Financial Commissioner was final and each of the authority accepted that the petitioner is entitled for 23 bighas of land.

16. He further submitted that the petitioner filed an application under Section 18(2) of the Act for regaining of possession of particular Khasra No. 1/203 (before consolidation), which has been allotted new Khasra number after consolidation, as he was in cultivatory possession. Smt. Hardei, mother of respondent No. 3, Baljit Singh claimed adverse possession on the ground that she was a Bhumidar of the land. Respondent Nos. 1 and 2 claimed that they have purchased the land from Baljit Singh and others and became the Bhumidar of the land in question in succession of Baljit Singh.

17. Mr. Maan submitted that undisputedly order dated 31.03.1971 has attained finality and order dated 09.12.1987 passed by this Court has to be complied with in its letter and spirit.

18. Mr. R.P. Vats, learned counsel appearing on behalf of respondent Nos. 1 and 2 submitted that by way of the application filed under Section 18(2) of the Act, petitioner sought repossession of 23 Bighas 7 Biswas of land out of Khasra No. 1/203, which had been jointly owned by respondent Nos. 3 to 5. He submitted that Revenue Assistant Shri L.D. Gupta, vide its order dated 31.03.1971 decided the aforesaid application holding the petitioner entitled for repossession of the aforesaid land from respondent Nos. 3 to 5, i.e., Baljit Singh, Ram Swaroop and Jail Lal. Also held that after consolidation of holding in the village some other Khasra numbers had been allotted to the respondents in lieu of the suit land and directed the Settlement Officer (Consolidation) to report as to which particular plots were to be given to the petitioner in exchange of the half share in the suit land after consulting the Settlement Record. Further directed, report shall also be accompanied by a Aksh Sizra Map and copy of Fard. Pursuant to which formal decree was directed to be prepared.

19. Mr. Vats submitted that Smt. Hardei was declared Bhumidar by Civil Court on 25.08.1969 and also by the Revenue Assistant on 28.02.1970 for the land

comprised in Khasra No. 1/203, i.e., the land in dispute vide application filed under Section 18(2) of the Act. However, said Smt. Hardei was not impleaded as party in the suit by the petitioner despite the fact that the suit land belonged to her.

20. Mr. Vats further submitted that during consolidation, Smt. Hardei was allotted land in different Khasras in lieu of the land in Khasra No. 1/203 acquired by her under court orders. As per order dated 31.03.1971, passed by the Revenue Assistant, the petitioner was to be granted repossession of the suit land of Khasra No. 1/203 or land allotted in lieu thereof. Since the suit land in Khasra No. 1/203 had gone to Smt. Hardei under court orders, hence, respondent Nos. 3 to 5 were not allotted any land in lieu of Khasra No. 1/203. Thus, the land acquired by respondent Nos. 3 to 5 during/after consolidation was in lieu of the land other than land in Khasra No. 1/203.

21. Also submitted that the respondent Nos. 1 and 2 purchased the land from respondent No. 3 after completion of consolidation proceedings and definitely none of the land allotted to respondent No. 3 was in lieu of Khasra No. 1/203 as the said land had already gone to Smt. Hardei before consolidation itself. Hence, respondent Nos. 1 and 2 are the bona fide purchasers of the land from respondent No. 3, as the said land was never subject matter of litigation at the time of its purchase. Therefore, the doctrine of lis pendence is not applicable. The suit land before Revenue Assistant Shri L.D. Gupta was different from the land purchased by the respondent Nos. 1 and 2.

22. Mr. Vats submitted that neither Mr. K.R. Sharangal nor Mr. M.K. Malha Settlement Officers (Consolidation) while passing orders dated 03.07.1985 and 01.05.1995 respectively complied with the directions of Revenue Assistant Shri L.D. Gupta dated 31.03.1971, and the later did not comply with the directions of this Court dated 09.12.1987 as well. In fact, the Settlement Officer (Consolidation) was not supposed to pass any order but to submit a report alongwith Shajra Aksh and Fard to the Revenue Assistant, containing details of the land allotted in lieu of Khasra No. 1/203.

23. Learned counsel further submitted that this Court vide aforesaid order dated 09.12.1987, which was a consent order, specifically directed the Settlement Officer (Consolidation) to comply with the orders dated 31.03.1971 passed by Revenue Assistant Shri L.D. Gupta after giving opportunity of hearing to all parties concerned. However, the Settlement Officer (Consolidation) Shri Malha neither recorded any evidence nor provided any opportunity to the parties and instead of submitting its report along with copies of Shajra Aksh and Fard as proof of allotment of land in lieu of Khasra No. 1/203, ordered to hand over possession of the land belonging to respondent Nos. 1 and 2, whereupon the said respondents are having approved farm houses. Accordingly, the matter is required to be decided afresh by the Settlement Officer (Consolidation) strictly in terms of the orders dated 09.12.1987 passed by this Court and hence prayed that the matter be remanded back to the Settlement Officer (Consolidation).

24. Mr. D.V. Khatri, learned counsel appearing on behalf of the respondent No. 3 submitted that pursuant to order dated 31.03.1971 passed by the Revenue Assistant on the application filed by the petitioner under Section 18(2) of the Act, the petitioner was held entitled to repossession of the land measuring 23 Bighas and 7 Biswas from respondent Nos. 3 to 5.

25. Being aggrieved, both the parties challenged the said order dated 31.03.1971 before the Additional District Magistrate and thereafter before the Financial Commissioner, Delhi, however, their appeals were dismissed vide orders dated 18.07.1977 and 22.06.1979 respectively. Hence, the order dated 31.03.1971 has attained finality.

26. Mr. Khatri submitted that instead of complying with the directions contained in order dated 31.03.1971 and submitting the requisite report, the Settlement Officer (Consolidation) Shri K.H. Sarangal, passed an order dated 03.07.1985, whereby directing that the decree holders be delivered possession equivalent to 23 Bighas 7 Biswas in respect of land out of khata of the respondent No. 3 Shri Baljit Singh.

27. Thereafter, the said order dated 03.07.1985 was challenged by the respondent No. 3 before the Financial Commissioner, who while remanding the case back to the Settlement Officer (Consolidation), modified the same vide its order dated 28.04.1986. Relevant portion of the same is as under:-

".....The orders of the Settlement Officer (C)/Revenue Assistant is modified to the extent that he should first evaluate the land and thereafter deduct land out of the holdings of the petitioner and that of the successors-in-interest of sarvshri Ram Swaroop and Jai Lal to the extent of 1/3rd share each for being given to respondent No. 1 Kishan Lal. While dealing with the case, the Settlement Officer(C) should also call for the option of these persons to surrender the land to be given to Kishan Lal respondent in lieu of land held by him in khasra number 1 etc/203. In consequence of the above, the present case stands remanded to the Settlement Officer(C)/Revenue Assistant for implementation of the above observations forthwith."

28. Mr. Khatri submitted that vide order dated 09.12.1987, passed in W.P. (C) No. 463/1987, this Court set aside the orders dated 03.07.1985 and 28.04.1986 and remanded the case back to the Settlement Officer (Consolidation) for deciding it afresh. However, again instead of complying with the directions passed by this Court vide order dated 09.12.1987 and the order dated 31.03.1971, the Settlement Officer (Consolidation) Shri M.K. Malha passed the order dated 01.05.1995 illegally, unlawfully, arbitrary and without any jurisdiction. Whereas the said order dated 01.05.1995 was set aside by the Revenue Assistant Shri Ramesh Tiwari vide its order dated 26.06.1995 and remanded the case back to the Settlement Officer (Consolidation) to comply with the directions of this Court vide order dated 09.12.1987.

29. Mr. Khatri submitted that the aforesaid order dated 26.06.1995 was

confirmed by the Financial Commissioner vide orders dated 19.12.1995 and 02.02.1996 passed in second appeal and review petition respectively. Accordingly, as per the order dated 31.03.1971 passed by the Revenue Assistant Shri L.D. Gupta, formal decree is yet to be passed in the aforesaid case, hence, the order dated 01.05.1995 passed by the Settlement Officer (Consolidation) is illegal, unlawful, arbitrary, without jurisdiction and against the directions of this Court dated 09.12.1987 and same has rightly been set aside by the Additional Collector Shri Ramesh Tiwari and confirmed by the Financial Commissioner vide orders dated 26.06.1995, 19.12.1995 and 02.02.1996 respectively. So, the challenge of the aforesaid orders before this Court is not only misuse of process of law, a mischievous act but also a mala fide speculative attempt on the part of the petitioner to mislead this Court. Hence, prayed that the instant writ petition deserves to be dismissed with exemplary costs.

30. I have heard the learned counsel for the parties.

31. The petitioner is a tenant under the Delhi Land Reforms Act, 1954. On the basis of the rights accrued in time with provisions of the Act, the petitioner has filed an application under Section 18(2) of the Delhi Land Reforms Act for regaining the possession before the Court of Revenue Assistant.

32. Considering the facts and materials, the Court of Revenue Assistant passed an order dated 31.03.1971 whereby the right over the property has been determined after framing an issue in respect of the rights. However, the same has been challenged before the Appellate and the Revisional Authorities. Both the Authorities, under the Act, the Additional Collector and the Financial Commissioner examined the aspects and dismissed the appeal and revision petition vide the orders dated 18.07.1977 and 22.06.1979 respectively.

33. Thereafter, the petitioner moved an application before the Settlement Officer for execution of the judgment/decreed passed by the Court of Revenue Assistant. During pendency of the proceedings under Section 18 of the Act, the consolidation proceedings have been taken place at the concerned village. Accordingly, changes have been effected. The properties have been the subject matter of the petition were altered and new plots have been given to the owners in lieu of pre-consolidation holdings. Accordingly, the Khasra number is also changed. As a result of the consolidation proceedings, the Settlement Officer could not execute the order as it was passed, however, made an order which was again challenged by the respondent before the respective forums.

34. Thereafter, the respondents has challenged the findings of the authorities under the Act before this Court in W.P. (C) 463/87 and the same has been allowed on 09.12.1987 with directions to the Court of Revenue Assistant to pass the decree in accordance with the order already passed by Revenue Assistant on 31.03.1971. Accordingly, the findings of Revenue Assistant attained finality in respect of rights of the petitioner in the property.

35. In the present context, it is relevant to note Sub-Section 2 of Section 2 of

Civil Procedure Code, 1908 which defines the term "Decree" as under:

""Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-----

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

36. It is also relevant to note the definition of "Judgment" as it is defined in Sub-Section 9 of Section 2, which reads as under:

"Judgment means the statement given by the Judge on the grounds of a Decree or Order."

37. Therefore, the rights of the petitioner has been exclusively adjudicated in respect of the properties and determined by the Revenue Assistant on 31.03.1971. The same has been affirmed by this Court vide order dated 09.12.1987. However, the parties were given liberty to lead evidence for the purposes of execution. Undisputedly, findings of the Revenue Assistant were never disturbed by this Court.

38. However, the fact reveals that the judgment debtors, during the pendency of the proceedings, the property in question has been sold to respondent nos. 1 and 2 who are alleged to be the bonafide purchasers of the property. Therefore, they are claiming the right over the property in question and seeking the protection, since long they were in continuous possession of the property and also constructed a Farm House at the property by taking the permission from the Municipal Corporation of Delhi.

39. It is also important to note that the order passed by the revenue assistant on 31-03-1971 has attained finality, accordingly, as per the directions of this Court, the Settlement Commissioner/Revenue Assistant summoned the Consolidation record and directed the office Kanoongo to ascertain the value of Khasra No. 1/203 etc. measuring 23 Bighas 7 Biswas situated at Holambi-Khurd. Moreover, directed the Kanoongo to carve out new "Killa" numbers equal to the value and quality of Khasra No. 1/203. Accordingly, the Revenue Assistant/Settlement Officer (Consolidation) has identified the properties equal in value and quality and passed the order on 01.05.1995.

40. Thereafter, the respondent nos. 1 and 2, who were allegedly the bonafide purchasers of the property, had challenged the order dated 01.05.1995 passed

by the Revenue Assistant, before the Additional Collector. While exercising the appellate jurisdiction under the Delhi Land Reforms Act, 1994, the Additional Collector came to a specific conclusion that the land in question was never in dispute and the respondent No. 1 and 2 purchased land from respondent No. 3/ Baljeet Singh, which is other than Khasra No. 1/203 or land allotted in lieu of Khasra No. 1/203. Therefore, the transaction between the respondent nos. 1, 2 and Late Baljeet Singh does not hit by Section 52 of the Transfer of Property Act, 1882. The Additional Collector also recorded that the liability arising out of the Decree is to be bifurcated among the judgment debtors, i.e., Ram Swaroop and Jai Lal and accordingly, remanded the matter to the concerned Revenue Assistant with a direction that the alternative Khasra Nos. in lieu of Khasra no. 1/203 belonging to the judgment debtors be identified for passing the Decree.

41. The Order of the Additional Collector has been challenged under Section 185 of the Delhi Land Reforms Act, 1954 before the Financial Commissioner. The Financial Commissioner while exercising the power under Section 185 of the DLR Act came to the conclusion that the executing Court has travelled beyond the jurisdiction and accordingly the findings of the Additional Collector have been confirmed, resultantly, the Appeal got dismissed.

42. Being aggrieved, the petitioner has filed the present Writ Petition.

43. It is trite that the Executing Court shall execute/implement the Decree as intended in the Decree, therefore, the Executing Court cannot go further. However, in the present case, during the consolidation proceedings different land has been allotted in lieu of the holdings, i.e., Khasra No. 1/203 in Village Holambi Kalan.

44. The important question needs to be looked into on the aspect of the implementation of the decree against the judgment debtors who except Baljit Singh have not received property in lieu of Khasra No. 1/203. The property has been assigned to Baljit only in lieu of Khasra No. 1/203. Thus, except Baljit, the judgment debtors, namely, Ram Swaroop and Jaipal are not holding any property in lieu of Khasra No. 1/203 as a result of consolidation proceedings.

45. In this context, the moot question is whether the properties which have been assigned or devolved in the name of Ram Swaroop and Jai Pal will be liable under the Decree.

46. In this context, it is relevant to note Section 4 Delhi Land Reforms Act, 1954:

(1) There shall be, for the purposes of this Act, only one class of tenure-holder, that is to say, "Bhumidar" and one of class of sub-tenure holder, that is to say, Asami".

(2) Tenure-holder means a person who holds land directly under and is liable to pay land revenue for that land to the State, and sub-tenure holder is a person who holds land from a tenure-holder or Gaon Sabha and is liable to pay rent therefore to the tenure-holder or a Gaon Sabha:

[Provided that land given in exchange to a tenure-holder or a sub-tenure holder, as a result of consolidation of holdings, shall for the purposes of this Act be deemed to be land originally held by the tenure-holder or the sub-tenure holder, as the case may be]"

47. Section 4 of Delhi Land Reforms Act, 1954, has legal significance to solve the issue regarding enforceability of the Decree against the judgment debtors. Section 4 also carved out the legal principle that the devolution of property is more important than the persons who are holding the property.

48. In view of the Proviso of Section 4 of Delhi Land Reforms Act, 1954, Baljeet Singh/respondent No. 3 is deemed to be the judgment debtor for the purposes of the execution of the order passed by the Revenue Assistant.

49. Despite the legal position as narrated above, the Financial Commissioner recorded that the property of the respondent Nos. 1 and 2 is not connected with present dispute and the Khasra Number is different, therefore, the transaction and execution of sale deed is not hit principle of lis pendence which is envisaged as per Section 56 of Transfer of Property Act, 1882. The reason that has been recorded by the Financial Commissioner is peculiar because of the fact that the dispute was in respect of Khasra No. 1/203, whereas the property transferred to the respondent Nos. 1 and 2 falls under different Khasra numbers.

50. It is not in dispute that the property has been transferred to respondent Nos. 1 and 2, which was received by Baljit in lieu of consolidation falling in Khasra No. 1/203. Therefore, the findings of the Financial Commissioner regarding the non-applicability of the principle of lis pendence is not proper, therefore, it is set aside on that account.

51. The Additional Collector came to a specific conclusion that the decree is to be executed against the original respondents that is Baljit, Ram Swaroop & Shri. Jai Lal bifurcating the liability among the judgment debtors. However, the fact remains that the property that has been received in lieu of Khasra No. 1/203 falls under the share of Baljit. Therefore, the properties which is acquired and received by the judgment debtors in different proceedings cannot be said part of the proceedings, until and unless the property is assigned in lieu of pre-holdings, specifically in view of the proviso to section 4 of Delhi land reforms Act, 1954. It is also recorded by the Additional Collector that the land has been received by Baljeet in lieu of Khasra No. 1/203, but the property falls under different Khasras. The reasoning of the Additional Collector will not hold good in view of the proviso of Section 4 of DLR Act, 1954. Undisputedly, respondent nos. 1 and 2 had purchased the property from Baljeet Singh. Therefore, it is specifically hit by the doctrine of lis pendence. The transferer cannot transfer better right or title to the transferee, which he never holds at the time of transfer.

52. It is also fundamental to note that the Financial Commissioner did not consider the legal aspect which has been missed out by the Additional Collector. In a routine manner, the Financial Commissioner confirmed the findings of

Additional Collector. Moreover, both the authorities mentioned above ought to note the facts and circumstances on which the executing Court was executing the Decree in letter and spirit as per the directions of this Court vide order dated 09.12.1987 in W.P. (C) 463/1987.

53. Pertinently, as per the provisions of the Land Reforms Act, 1954, the property has been received by the order in Consolidation Proceedings, in lieu of pre-consolidation holdings, is considered to be the property for the purposes of Delhi Land Reforms Act, 1954. Therefore, the property or land that has been given to the owner in lieu of pre-consolidation holdings shall carry the liability with the holdings, irrespective of the fact that the property may transfer to a third party with the liability which the holder carries. The Proviso of Section 4 of Delhi Land Reforms Act, 1954 also implies that the property which was in the name of one or more co-owners may devolved entirely into one co-owner, who thereafter shall be considered as a holder of the property for the purposes of Delhi Land Reforms Act, 1954. Therefore, the Additional Collector came to a wrong conclusion that the liability shall be bifurcated in the name of judgment debtors, whereas the land in question, i.e., the land which has been received or assigned in lieu of Khasra No. 1/203 never devolved or assigned to other judgment debtors, except Late Baljeet Singh/Respondent No. 3.

54. In view of above discussion, the order dated 26.06.1994 passed by the Additional Collector and the subsequent orders dated 19.12.1995 and 02.12.1996 passed by the Financial Commissioner are hereby set aside.

55. Accordingly, this Court restores the order passed by the Revenue Assistant/Consolidation Officer dated 01.05.1995.

56. This Court also note, the litigation started way back in 1955. The petitioner has been pursuing the remedies under the Statute and we reached in 2014, i.e., 59 years in the process of litigation.

57. Accordingly, I direct the Revenue Assistant to take necessary actions and proceedings for delivering the possession of the property to petitioner.

58. It is also open to the alleged bonafide purchasers, i.e., respondent nos. 1 and 2 to take legal recourse against the owners of the property, if so advised.

59. The petition is allowed with no order as to costs.