

(2003) 04 DEL CK 0111

In the Delhi High Court

Case No : Civil Writ Petition No's. 1548, 1549, 1550, 1555 and 1667 of 2000

Pawan Kumar and Ganga Bishan Gupta

APPELLANT

Vs

Financial Commissioner and Others

RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Delhi Land Reforms Act, 1954 — Section 74, 75

Citation : (2003) 4 AD 265 : (2003) 107 DLT 726

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : O.N. Vohra and Ajay Larola, for the Appellant; V.K. Tandon, Sujata Kashyap and Shruti Shashi, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—These writ petitions arise in identical circumstance and same question of law is involved. Therefore they are disposed of by this common judgment.

2. for the sake of convenience, facts from CWP No. 1548/2000 are noted.

3. The predecessor-in-interest of the petitioners, namely, Sh. Maman Singh, Smt. Hoshiari Devi, Tara Chand, Ram Narain and Smt. Sarjo residents of village Bamnoli, Delhi were allotted certain lands in that village, i.e. Khasra Nos. 198 (2-12), 204/2 (5-3), Khasra Number 221/2(3-13), 217 (541) and 200 (4-17) respectively. Since there is a dispute about the nature of these allotments, this aspect shall be adverted to at the appropriate stage. What is admitted position is that these persons moved applications u/s 74(4) of the Delhi Land Reforms Act (for short "the Act") in the Court of SDM/ RA praying that the Gaon Sabha be directed to admit them as Bhumidars of the aforesaid land. These applications were decided in their favor holding that they had amply proved they satisfactorily reclaimed the land and made it fit for cultivation and as such they were to be admitted as Bhumidars u/s 74 as in terms of Section 75, the Gaon Sabha shall

have the right to admit as Bhumidars to whom the land is leased out. The operative portion of the said order dated 12th September, 1996 reads as under:

"I pass the following orders. The Gaon Sabha is directed to admit the said applicants as Bhumidars in respect of land bearing Khasra Number 200 (4-17) in name of Sarjo, Kh. No. 198 (2-12) in name of Shri Maman Singh, Kh. No. 204 (5-3) in the name of Smt. Hoshiari Devi, Khasra No. 217 (95-11) in the name of Ram Narain and Khasra Number 221 (94-1) in the name of Tara Chand all lands situated in the revenue estate of village Bamnoli, Delhi, the applicants (i.e. The assami of his/ their admission as Bhumidars) shall be liable to pay such land revenues equal to 50% to the land calculated at the prevailing village rates but they shall not be liable to pay any compensation. It is also ordered that the said pieces of land mentioned above will not be sold or disposed of by any mode of transfer by the applicants or their agents."

4. As would be seen from the last lines quoted, restriction was imposed, while admitting these persons as Bhumidars to the effect that they would not sell or dispose of the land in question by any mode of transfer. Insofar as those applicants were concerned, they accepted the order and did not challenge the same. However, the Gaon Sabha was not satisfied with their declaration as Bhumidars. These persons have, however, sold their respective holdings to the petitioners.

5. To complete the narration of facts, it may be mentioned that after order dated 12th September, 1996 was passed by the Court of SDM/RA, the Gaon Sabha challenged this order in appeals filed u/s 185 of the Act in the Court of Collector, Delhi.

6. During the pendency of these appeals, the said applicants sold the lands to the petitioners herein. The petitioners made application under Order 1 Rule 10 of the CPC (CPC) for impleading them as respondents in the appeals. These appeals were disposed of vide order dated 26th October, 1998. Taking note of subsequent event, namely, sale of the land by the applicants in favor of the petitioners herein in spite of restriction imposed by the Court of RA vide order dated 12th September, 1996 the Collector held that such sale was not permissible and passed the order reverting back the land to the Gaon Sabha.

7. It may be mentioned at this stage that while disposing of the appeals, the Collector also dismissed the application of the petitioners preferred under Order 1 Rule 10, CPC by same order dated 26th October, 1998. It would be apposite to reproduce paras 8 and 11 of this order which depicts the mind of the Collector while taking the aforesaid course of action:

"8. After going through the contents of application as well as other records of file, I find that the suit has been allotted to the respondent under the provisions of Section 74(4) of the Act subject to condition that they will not sell or dispose of the suit land by any mode of transfer. The Bhumidari rights has been conferred upon the respondent is condition and the respondent No. 1 has transferred the

land for which he was not competent. It is a settled law that a person cannot transfer a better title than that which he has. In the present case the respondent No. 1 who was not having the right to transfer the suit land have transferred the land to respondent No. 2 which is void in eyes of law. Therefore, the sale in itself is void and the non serious applicants are not entitled to be imp leaded as a party. As regards the case of Shri Maman Singh wherein his LRs are contending that the sale deed is not a genuine one, they are at liberty to challenge the sale deed in the competent Court having jurisdiction. Considering all these facts, I dismiss the application under Order 1 Rule 10, CPC.

11. After hearing the parties and going through the contents of appeal, application, reply, lower Court files and other records on files, I find that the suit lands were allotted to the respondent No. 1 and after the they were declared as Bhumidari u/s 74(4) of the Act subject to condition that they will not transfer the land in question, the respondent No. 1 transferred the land to respondent No. 2 and the mutations have also been sanctioned. In the present cases the respondent No. 1 was not having right to transfer the land. It is a well settled law that a person cannot transfer the better title than that which he has. Hence the transfer is void in the eyes of law. As per provisions enshrined in Section 5(a) of the Act a Bhumidari shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumidar by or under this Act. In the light of this section if the present impugned order is analysed, it is evident that by way of impugned order the respondent No. 1 has been conferred upon Bhumidari right and liability of not transferring the land has also been imposed therein. The respondent No. 1 accepted the right of Bhumidari whereas he has not obeyed the liabilities imposed upon him. Such types of option are not available with them. The basic purpose of allotment of land under 20-point Programme under the provisions of Sections 73 and 74 of the Act to the landless Harijans was to uplift the weaker sections of the society. If they are allowed to transfer the land, they will again become landless and will again claim for such allotment thereby making a mockery of the intent and policy of the Government. Therefore, the allottees are declared Bhumidar subject to condition that they will not transfer the land. This view has also been taken by the Hon. Financial Commissioner in case No. 40/856-CA vide order dated 8.4.1986 which was challenged before the Hon"ble High Court vide (CW.No. 980 of 1986 wherein the Hon"ble High Court upheld the order passed by the Hon. Financial Commissioner. Considering all these facts, I revert back the land to Gaon Sabha."

8. The petitioners preferred appeals u/s 184(4) of the Act against this order dated 26th October, 1998 in the Court of the Financial Commissioner. These appeals were dismissed by the Financial Commissioner vide order dated 30th July, 1999 confirming the view taken by the Collector in his order dated 26th October, 1998. Other appeals filed u/s 185(4) were dismissed on 18th October, 1999 on the ground of res judicata. The petitioners even sought review which was also dismissed vide order dated 6th December, 1999.

9. Present writ petitions are preferred seeking quashing of orders dated 18th October and 6th December, 1999 passed by the Financial Commissioner, order dated 26th October, 1998 passed by the Additional Collector as well as restriction on transfer of land imposed vide order dated 12th September, 1996 passed by the RA.

10. As is clear from the narration of aforesaid facts, while declaring the applicants as Bhumidars vide order dated 12th September, 1996 restriction was imposed that these applicants will not sell or dispose of the land in question by any mode of transfer. In spite thereof they have sold the land to the petitioners herein. Thus sale of land is in violation of such restrictions. Therefore, if the order of the RA imposing this restriction is valid, the impugned orders passed by the Collector as well as the Financial Commissioner would be perfectly justified as land having been sold in violation of the conditions, it is rightly reverted back to the Gaon Sabha by the impugned orders.

11. The petitioners are conscious of this limitation. It is for this reason, imposition of this restriction itself has been challenged by the petitioner as they understand that unless this hurdle is cleared from their way, the petitioners would be able to make any headway.

12. Mr. O.N. Vohra, learned Senior Counsel for the petitioner submitted that the RA had no jurisdiction to impose any such restrictions. He contended that when applications were made by the applicants u/s 74 of Act to admit them as Bhumidars, it had to be dealt with in accordance with provisions of this Act. His submission was that a person acquires Bhumidari rights once he fulfills the provisions of Section 74 and Section 75 of the Act. On declaration of a person as Bhumidar Section 31 of the Act provides that Bhumidari rights are transferable subject to restrictions contained in Sections 33 to 37 of the Act. No further restrictions could be imposed by the RA on the Bhumidari rights as the Act is a complete Code as held by the Supreme Court in the case of Hatti Vs. Sunder Singh, , as well as of this Court in the case of Nathu Vs. Hukam Singh and Others, . He further submitted that where the statute confers a power and also prescribes the manner in which it to be exercised, then it is to be exercised in that manner or not at all and all other manners are necessarily excluded. He placed reliance on Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, ; State of Uttar Pradesh Vs. Singhara Singh and Others, ; Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, .

13. His concluding submission was that the land was not allotted to the applicants under 20 Point Programme of the then Prime Minister of India as alleged by the respondents. He submitted that as per the records produced by the respondents, following aspects were amply proved:

(a) The nature of land being waste land.

(b) Creation of leases by the Gaon Sabha in favor of persons who were eligible for being lessees or assamis in possession;

(c) Recognition of fact that waste land had been developed into cultivable land by applying funds and bestowing labour and converted into a natural asset for the nation.

14. Mr. V.K. Tandon and Ms. Sujata Kashyap, learned Counsels for the respondents, on the other hand, argued that restriction imposed by order dated 12th September, 1996, by the RA was perfectly valid and justified. Their submission was that the entire basis of the argument of the petitioners was ill-founded whereby it was sought to be argued that the Bhumidari rights were granted to the applicants because of applicants having lease-hold rights. It was submitted that records clearly reveal that it was a grant to the applicants whereby pieces of land were given to the five applicants under 20 Point Programme, such a grant could be subject to the condition i.e. restriction on the transfer. In fact according to the learned Counsel, this was the main purpose of allotting the land to landless labourers under 20 Point Programme, namely, they are able to make use of this land themselves and earn their livelihood and purpose was not to allot the land to the landless labourers to enable them to sell it further. In support of this submission, they heavily relied upon the judgment of the Supreme Court in the case of Murlidhar Dayandeo Kesekar Vs. Vishwanath Pandu Barde and Another, . It was also submitted that when the order was passed by the RA on 12th September, 1996 imposing such restriction, no appeal was preferred by the applicants and Therefore this restriction became final and binding.

15. Before deciding the main issue posed above, it would be necessary to deal with this aspect of nature of the allotment to the applicants, namely, whether the lands were allotted to the five applicants under 20 Point Programme. The answer of this question will have bearing on the decision on the main issue involved.

16. The learned Counsel for the respondents had produced the records i.e. minutes of meeting of Gram Panchayat held on 3rd October, 1996. It is recorded in this meeting that 21 landless and Harijan persons of the village were given one acre land each under 20 Point Programme for their economic upliftment. However, some out of these persons had sold their land.

17. Minutes of this meeting given indication that land was allotted to the applicants under 20 Point Programme. It may, however, be secondary evidence as original records, while allotting the land, are not produced. However, there is other evidence which indicates that land was allotted under 20 Point Programme to the applicants. In fact perusal of order dated 12th September, 1996 would show that applications were filed by the applicants u/s 74 of the Act on the ground that the lands in question were leased out to them under 20 Point Programme. Opening sentences of this order read as under:

"Petitioners Servashri Maman Singh, Smt. Hoshiar Devi, Tara Chand, Ram Narain and Smt. Sarjo residents of village Bamnoli, Delhi have made applications u/s 74(4) of the Delhi Land Reforms Act, requesting that the Gaon Sabha be directed

to admit them as Bhumidar of land bearing Khasra No. 198 (242) in case Maman Singh, Khasra Number 204/2 (5-3) in case of Smt. Hoshiari Devi, Khasra Number 221/2 (3-13) in case of Shri Tara Chand, Khasra Number 200 (4-17) in case of Smt. Sarjo situated at village Bamnoli, Delhi which the Gaon Sabha had leased out to them under 20 Point Programme and they have since been recorded Assamis in the revenue records."

18. It is thus apparent that these applications had themselves founded their case on the averments that the land in question was allotted to them under 20 Point Programme and they had since been recorded as Assamis in the revenue records. There is a repeated reference to this assertion on the part of the applicants as would be clear from the following lines at page 3 of the order:

"The factum of the allotment of land under 20 Point Programme have not been denied by the respondents nor there is anything available in the record to rebut this point."

19. Thus here also the RA was noticing the contention of the applicants themselves that they were allotted the land under 20 Point Programme and was observing that the respondents had not denied the same. Even the orders of the Additional Collector as well as the Financial Commissioner recorded that land was allotted to the applicants under 20 Point Programme. In view of the aforesaid impeccable evidence in the form of admission on the part of the applicants themselves in preferring the applications u/s 74 of the Act on the basis that the land was allotted to them under 20 Point Programme, it does not lie in the mouth of the petitioners (successor-in-interest of the applicants), to contend that the land was not allotted under 20 Point Programme. The contention of Mr. Vohra to the effect that the RA proceeded on wrong premises that the land was allotted under 20 Point Programme, is Therefore without any force. It was at the instance of the applicants themselves that the RA was made to proceed on the basis that the land is allotted to them under 20 Point Programme.

Once it is held that the land in question was allotted to the applicants by way of grant under 20 Point Programme, the consequence would follow automatically. These consequences are provided by the Supreme Court in the case of 1995 Supp. wherein the Court held as under:

"It is seen that prior permission for alienation of the land was a condition precedent. Before permission is given, the Competent Authority is enjoined, by operation of Article 46 of the Constitution, to enquire whether such alienation is void under law or violates provisions of the Constitution and whether permission could be legitimately given. In that behalf, the Competent Authority is enjoined to look to the nature of the property, subject matter of the proposed conveyance and pre-existing rights flowing there under and whether such alienations or encumbrances violate provisions of the Constitution or the law. If the answer is in the positive, then without any further enquiry the permission straightaway would be rejected. Even in case the permission is granted, it would be decided on

the anvil of the relevant provisions of the Constitution and the law. In this case, the authorities, though had not adverted to the aspect of the matter, broadly refused permission on the ground that the assigned land cannot be permitted to be sold or converted to non-agricultural use. The action refusing permission, Therefore, is in consonance with the constitutional scheme in Part IV of the Directive Principles. The agreement is, Therefore, void u/s 23 of the Contract Act is opposed to public policy, vide judgment in Delhi Transport Corporation v. D.T.C. Mazdoor Congress by one of us Ramaswamy, J., with whom Sawant and RA, JJ, agreed by separate but concurring judgment and the permission was rightly refused to be given for alienation. The possession is unlawful. Section 53-A of Transfer of Property Act is not attracted. The appellant's possession continues to be unlawful and he is not entitled to any improvement made on the lands. The Collector is directed to resume the lands immediately and assign the same to the legal representatives of first respondent if found eligible or to any other eligible tribal."

20. Thus clear mandate of the Supreme Court in the aforesaid judgment was that such a grant to the landless labourers was for their economic upliftment and thus sale by such applicants would not be permissible as it would defeat the very purpose of grant of land to such landless labourers.

21. Learned Counsel for the respondents, in these circumstances, rightly argued that when order dated 12th September, 1996 was passed on the applications preferred by the applicants granting them Bhumidari rights subject to aforesaid restrictions, the applicants accepted this restriction and did not challenge the same. That is why they did not prefer any appeals. On the contrary it is the Gaon Sabha which was aggrieved against the order of the RA directing the applicants to admit as Bhumidar (even when it was with condition not to sell or dispose of) and Therefore, it is the Gaon Sabha only which preferred the appeal. Insofar as applicants are concerned, they having accepted the condition were bound by the same. The petitioners who are successor in interest of those applicants, have no locus standi to challenge this restriction imposed by the RA. The matter would have been different had such a condition imposed was without jurisdiction. That being not so, as held above and there being no challenge by the applicants (predecessor-in-interest of the petitioners), the petitioners cannot be allowed to challenge this condition.

22. There is yet another aspect of the matter which needs to be mentioned. Order dated 12th September, 1996 passed by the RA granting Bhumidari rights; albeit with the aforesaid restriction, had not become final inasmuch as against this order admitting the applicants as Bhumidar, the Gaon Sabha had preferred appeals which were pending before the Additional Collector. During the pendency of these appeals, the said applicants sold lands in question to the petitioners. The petitioners thus purchased the lands with calculated risk. Therefore, even when the order granting Bhumidari rights to the applicants had not become final and over and above there was restriction on the applicants to sell or dispose of the

land to any person, the applicants could not have sold the said lands during the pendency of the appeals.

23. In view of this position obtaining on record, namely, the land in question was allotted to the applicants under 20 Point Programme, it is the judgment of the Supreme Court in the case of Murlidhar Dayandeo Kesekar (supra), which would be squarely applicable and various judgments cited by the learned Senior Counsel for the petitioner will have no application.

24. In this conspectus, I do not find any merit in these writ petitions which are dismissed accordingly.

25. There shall be no order as to costs.