(2010) 09 DEL CK 0089

In the Delhi High Court

Case No : Writ Petition (C) No. 5807 of 2010

Sh. Bhagmal and Others — APPELLANT

Vs

Gaon Sabha Aya Nagar and Others — RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:
Delhi Land Reforms Act, 1954 — Section 84, 85, 86A

Citation : (2010) 09 DEL CK 0089

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Raghuvinder Varma, for the Appellant; Rajiv Nanda and Rachna Saxena, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petitioners have filed this petition for restraining the respondent No. 1 Gaon Sabha, Aya Nagar, New Delhi from interfering with the petitioners'' possession and enjoyment of land bearing Khasra No. 1676 (414) in the Revenue Estate of Village Aya Nagar, Tehsil Mehrauli, District South, New Delhi and to further restrain the respondents from demolishing the house and the superstructure standing over the said land. The petitioners also claim a direction to the respondent No. 2 Dy. Commissioner (South District) to maintain a correct revenue record of the Village Aya Nagar so as to indicate therein the petitioners'' possession of the said land.

2. It is the case of the petitioners that the land aforesaid is their ancestral land and their grandfather had constructed houses thereon long before the promulgation of the Delhi Land Reforms Act, 1954; that after the promulgation of the said Act, the Gaon Sabha filed suits for ejectment against the villagers including against the predecessors of the petitioners u/s 84 of the said Act; that the said suit was dismissed by the Revenue Assistant-cum-Assistant Collector vide order dated 31st July, 1961 holding that the construction on the said land was of long before and prior to 28th October, 1956 and that the said land did not vest in the Gaon Sabha upon promulgation of the said Act; that the said order of

the Revenue Assistant became final; however notwithstanding the said order, the petitioners / their predecessors were not recorded as bhoomidhar with respect to the said land and the revenue records continued to represent the land as belonging to the Gaon Sabha though in many Khasra Gidawaris the possession of the petitioners / their predecessors was shown. The petitioners further plead that in or about the year 1997-98 action u/s 86A of the said Act was illegally initiated with respect to the said land against some of them. One of the petitioners in the year 2005 also filed a petition u/s 85 of the Act with respect to the said land. The proceedings for ejectment from the land u/s 86A and the proceedings u/s 85 of the Act are stated to have been clubbed and still pending.

3. The petitioners filed this petition contending that pursuant to Circular dated 6th September, 2000 of the Gaon Sabha for survey of lands, a survey was conducted; fearing forcible dispossession pursuant to the said survey, the present petition was filed.

4. Notice of the petition was issued. The respondents have filed counter affidavit in which it is inter alia stated that the action if any regarding ejection, demolition with respect to the land aforesaid would be taken only after the decision in the said proceedings aforesaid u/s 86A of the Act.

5. In view of the aforesaid counter affidavit, it was put to the counsel for the petitioners that the petition can be disposed of. However, the counsel for the petitioners agitated the relief also claimed in the petition of correction of revenue records and contends that the respondents should be directed to record the possession of the petitioners of the said land. Reliance in this regard is placed on Balbir Singh Vs. A.D.M. (REVENUE) and Others, by which judgment the Division Bench of this Court had struck down certain amendments in the Delhi Land Revenue Rules, 1962 enabling the Revenue Authorities not to record the correct possession as existing on the spot. The counsel for the petitioners on the basis of the said judgment contends that it is mandatory for the respondents to record the possession of the petitioners. Reliance in this regard is also placed on another Division Bench judgment in Ram Sarup Kathuria v. Administrator of Union Territory of Delhi 2001 (58) DRJ 11 where also the Revenue Authority was directed to make entries in the Record of Rights in accordance with the result of the enquiry and direction of the Division Bench in Balbir Singh case.

6. I have enquired from the counsel for the petitioners whether in either of the aforesaid two cases, proceedings as in the present case u/s 85 by the petitioners and u/s 86A by the Gaon Sabha were pending. The counsel though initially answered in the affirmative but was unable to show from the judgments that such proceedings were pending in those cases. The counsel took time to produce other judgments in which notwithstanding the pendency of such proceedings direction for making entry was made. Copies of judgments in Additional District Magistrate (Revenue) Delhi Administration v. Siri Ram 2000 (54) DRJ 345 (SC) and in Rajinder Singh Vs. Gaon Sabha, Kadipur and Others, have been handed over thereafter. However a perusal of the said judgments also does not show that

any proceedings as in this case were pending before the Revenue Authorities in those cases also.

7. I have also enquired from the counsel for the petitioners as to why the petitioners are insistent upon making of the said entries. The counsel for the petitioners states that upon such entries being made, fresh rights under the Act would accrue in favour of the petitioners.

8. I am unable to hold that the petitioners are entitled to the relief of direction to the Revenue Authorities to record the name of the petitioners. In my view such a direction during the pendency of the proceedings u/s 85 and 86A would give an unfair advantage to the petitioners. The rights of the petitioners with respect to the said land will be decided in the proceedings aforesaid and if the petitioners succeed in the said proceedings, the declaration sought by the petitioners shall be made. However, before the Revenue Authorities have decided the respective claims, direction as sought cannot be issued.

9. The petition is therefore disposed of binding the respondents to the statement contained in their affidavit of not dispossessing the petitioners or demolishing the house of the petitioners on the land aforesaid till the decision of the proceedings before the Revenue Assistant. The petition insofar as the second relief claimed by the petitioner, is dismissed with the direction that the entries shall be corrected depending upon the outcome of the proceedings pending before the Revenue Authorities. No order as to costs.