

(2011) 04 DEL CK 0207

In the Delhi High Court

Case No : Regular Second Appeal No. 162 of 2006

Shri Ishwar Singh (since deceased) through his Legal Heirs	APPELLANT
Vs	
Shri Sunder Singh and Others	RESPONDENT

Date of Decision : 04-04-2011

Acts Referred:

Delhi Land Reforms (Amendment) Act, 1965 — Section 28
Delhi Land Reforms Act, 1954 — Section 1, 150, 150(3), 185, 185(1)
Delhi Municipal Corporation Act, 1957 — Section 507
Delhi Panchayat Raj Act, 1954 — Section 3

Citation : (2011) 04 DEL CK 0207

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Sunil Chauhan, for the Appellant; Girish Kaul, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 16.2.2006 which had endorsed the finding of the trial judge dated 05.6.2004 whereby the suit filed by the Plaintiffs Sunder Singh and another seeking recovery of possession of the suit property comprising of 3 biswas in khasra No. 1233/3/8 and 2 biswas in 1233/1/1 (total 5 biswas) i.e. about 250 sq. yards situated in village Kishan Garh, Mehraulim New Delhi (hereinafter referred to as "the suit property") had been decreed in his favour.

2. Contention of the Plaintiff is that they are the owners of the suit property. Defendants had illegally designed to usurp the suit property. Upon the death of their father Mani Ram Defendants forcibly took possession of this suit land. On 03.11.1989 Defendants undertook to restore possession back to the Plaintiff but to no avail. Suit was accordingly filed.

3. In the written statement, the Defendants denied the rights of the Plaintiffs in the suit property; it was stated that the civil court does not have the jurisdiction to entertain the suit in view of Section 185 of Delhi Land Reforms Act, 1954

(hereinafter referred to as "the DLRA").

4. On the pleadings of the parties, the following seven issues were framed:

1. Whether the Plaintiff has locus stand-in to file the present suit?
2. Whether the suit is properly valued for the purposes of court fees and jurisdiction? OPD
3. Whether the Plaintiff is entitled for the relief claimed? OPP
4. Whether the Plaintiff has not correctly depicted the property in dispute? OPD
5. Whether Defendant No. 2 has become owner of the property in dispute by way of adverse possession? OPD
6. Whether the Civil Court has no jurisdiction to try and entertain the suit under the provision of Delhi Land Reforms Act? OPD
7. Relief.

5. Oral and documentary evidence was led. Trial judge returned a finding in favour of the plaintiff. The suit was decreed.

This was affirmed in appeal.

6. This is a second appeal. It has been admitted and on 03.8.2010 the following substantial question of law was formulated:

Whether the impugned judgment dated 16.2.2006 had not correctly appreciated the effect of the provisions of Section 150 of the Delhi Land Reforms Act, 1954, if so, its effect?

7. On behalf of the Appellant, it has been urged that the impugned judgment has incorrectly and illegally returned a finding that the Civil Court has the jurisdiction to entertain the suit; provisions of the DLRA were applicable; the suit was barred u/s 185 of the DLRA. It is submitted that even after a notification has been issued u/s 507(a) of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as "the DMC Act"), it does not preclude the operation of the DLRA; Section 150 of the DLRA, in fact, postulates that notwithstanding the said notification, the provisions of Sections 84, 85 and 86 of the DLRA are applicable; the suit land was governed by the provisions of the DLRA; the impugned judgment suffers from a perversity.

8. Arguments have been refuted. It is submitted that the provisions of Section 150 of the DLRA have no application. The said provision of law has a reference to the Gaon Sabha and Gaon Panchayats alone. The impugned judgment calls for no interference.

9. Issue No. 6 is relevant for the controversy in issue. The trial judge had on this count returned the following finding:

Issue No. 6

Issue No. 6 being a legal issue is taken first for disposal. The onus to prove this issue is upon the Defendant. It is an admitted fact that the suit property is situated in abadi land of village Kishan Garh. It is also an admitted fact that the property is situated in abadi land. Plaintiff has sought this relief on the strength of the mutation in revenue record in his favour with respect to property of late Sh. Mani Ram which is situated in the village Kishan Garh, Mahrauli, New Delhi. To it the Defendants have taken objection that the suit is not maintainable as this Court does not have jurisdiction to try and entertain the suit in view of the provisions of Delhi Land Reforms Act.

Accordingly, the evidence led by the parties is required to be appreciated at this juncture. Perusal of document ex. PW3/1, document ex. DW1/DB and ex. DW5/A clearly shows that the suit land comprises of "gair munkin abadi". Thus the aspect of the Abadi land and the admitted residential purpose of the suit land gets settled. This version finds support in the testimony of PW1. The Defendant on the other hand have not led specific evidence on this aspect of the case. However, Ld. Counsel for the Defendant has addressed exhaustive arguments on the subject. Keeping in mind the above aspects as discussed I now proceed to deal with the contentions of Ld. Counsel for the Defendant. Ld. Counsel for the Defendant has drawn my attention to document ex. PW3/2 wherein it is mentioned that late Sh. Mani Ram was bhumidhar of the suit land in question. Ld. Counsel alleges that accordingly at the time of his death late Sh. Mani Ram was bhumidhar and Plaintiff claims themselves to be successor in interest of late sh. Mani Ram. Ld. Counsel states that accordingly the Plaintiffs would not be the owner of the property even by virtue of Will as alleged. Ld. Counsel states that in view of the same the case would be governed by Section 84 by virtue of entry No. 19 of Schedule to Section 185 of Delhi Rent Reforms Act and has cited unreported judgment of the Hon"ble High Court of Delhi titled as "Babu Lal and Anr. v. M/s Delhi Cattle Breeding Farm Pvt. Ltd. Passed in RSA No. 40-D-1963 passed by Hon"ble Justice Sh. S. N. Andley as he then was. Perusal of the said citation shows that the limited purpose before the Hon"ble Court was with respect to the aspect whether the kothries involved in the said RSA formed part of land under the DLR Act 1954. The Hon"ble Court arrived at conclusion that the Kothris formed part of the land and accordingly the Civil Courts will not have any jurisdiction to entertain the present suit which was a suit for ejectment of a trespasser accordingly, the Hon"ble Court held that by virtue of item No. 19 in Schedule 1 of DLR Act r/w Section 185(1), a suit for ejectment of person from land as defined by the said Act is triable exclusively by the specified Revenue Courts. It is quite clear from the above extract of the said judgment that the same would not be applicable here as the question of interpretation of "land" in this suit has not at all arisen. Ld.

Counsel for the Defendant has further taken me through Section 1 of DLR Act 1954 and has stated that premises in question are covered in the area to which

DLR Act is applicable. Ld. Counsel has also taken me through Section 150 of the said Act and has highlighted Sub-Section 3 stating that the area is notified area and is not governed by any estate owned by Central Government. Further more Ld. Counsel has stated the effect of urbanization with respect to applicability of the Act and the same would be seen by virtue of Sub Section 3 of Section 150 Act.

In reply to the above contentions the Ld. Counsel for the Plaintiff relied upon judgment reported in Trikha Ram Vs. Sahib Ram, passed by Hon"ble High Court of Delhi wherein that "once by virtue of notification issued u/s 507(A) of DMC Act the land declared to be urban land could not longer to be classified as village abadi land within the definition of DLR Act." Accordingly, it has been contended that by virtue of the notifications u/s 507 which have been placed on record as Mark X and Mark Y the suit land ceases to the rural area and accordingly the provisions of DLR Act not applied. Section 507 of the DMC Act provides for such notifications. Perusal of Mark X and Mark Y shows that notification has been indeed issued and published in the Official Gazette and is recorded at page 7 at Sl. No. 37 of the said notification. Ld. Counsel for the Defendant argues that as this authority has not mentioned Section 150 of DLR Act the same would not be applicable to the facts of the present case. I have reasons to differ from the same. It is correct that a Bhumidhar would have to institute a suit for ejectment of unauthorized occupant from the land as described in DLR Act u/s 84 of the said Act as provided vide entry 19 of the Schedule to Section 185 of the said Act. Ld. Counsel for the Defendant has stated that since Defendant Nos. 1 & 2 and Plaintiff claims themselves to be successor in interest of late Sh. Mani Ram, they should have preferred claim under the DLR Act and not before this Court. Plaintiff have not denied in their plaint that they are not Bhumidhar of the suit land. The aspect of Bhumidhar preferring this suit goes away by virtue of the notification u/s 507 of the Act which has not been questioned or challenged and is sufficiently proved on record. Accordingly, the contentions of Ld. Counsel for the Defendant cannot be upheld. The contention of the Ld. Counsel for the Defendant with respect to the suit land forming part of the area by taking respite in the unreported judgment passed by Hon"ble Justice Sh. S.N. Andley, as he then was as reported above cannot also be any help of the Defendant as stated earlier.

It is not disputed that the suit property is used for residential purposes and it is also clear that the same has been urbanized and accordingly, I have no hesitation in holding that this Court has jurisdiction to deal, adjudicate and dispose of the present case. The issue is therefore, decided against the Defendant.

10. The impugned judgment had also endorsed this view.

11. The notification u/s 507(a) of the DMC Act had been proved as Mark X and Mark Y. Admittedly the suit land has ceased to be rural land; it had been urbanized by virtue of this notification u/s 507(a) of the DMC Act. It is also not in dispute that this notification has been duly gazetted. Impugned judgment had

relied upon a judgment reported in *Trikha Ram Vs. Sahib Ram*, where the Court had held that where by virtue of the notification u/s 507(a) of the DMC Act, once the land is declared to be urban land it could no longer be classified as "village abadi land" within the definition of "land" under the DLRA; provisions of DLRA would be inapplicable.

12. This finding in the impugned judgment calls for no interference. In fact the ratio of this judgment *Trikha Ram (supra)* has been reaffirmed by the Division Bench on 26.3.2010 in WP(C) No. 4143/2003 titled *Smt. Indu Khorana v. Gram Sabha and Ors.* This was answered in a reference which has been made; it had upheld the ratio of *Trikha Ram (supra)*.

13. Counsel for the Appellant has submitted that both the aforementioned judgments i.e. of *Trikha Ram (supra)* and *Indu Khorana (supra)* had not considered the provisions of Section 150 of the DLRA and its aftermath and effect. Reliance has placed upon Section 150(3)(a),(e),(f), 4 & 5 and have been highlighted; they are reproduced herein as under:

150. Establishment and incorporation of Gaon Sabha and Gaon Sabha Area-

(1)....

(2)....

[(3) If the whole of a Gaon Sabha area ceases to be included in rural areas as defined in the Delhi Municipal Corporation Act, 1957, by virtue of a notification u/s 507 of that Act, the Gaon Sabha constituted for that area shall thereupon stand dissolved and on such dissolution-,

(a) all properties, movable and immovable, and all interests of whatsoever nature and kind therein, including moneys held in Gaon Sabha Area Fund, vested in the Gaon Sabha immediately before such dissolution, shall, with all rights of whatsoever description, used, enjoyed or possessed by Gaon Sabha, vest in the central Government;

(b)....

(c)

(d)....

(e) the provisions of this Act shall apply in relation to lands in such Gaon Sabha area, not being lands vested in the Central Government under Clause (a), subject to the codification that references therein to Gaon Sabha and Gaon Panchayat shall be construed as references to the Central Government;

(f) notwithstanding anything contained in Clause (b) of Sub-section (2) of Section 1, the provisions of Section 84, 85 86A and 87 and any other provision of this Act. Relating to ejection of persons shall apply in relation to land vested in the Central Government under Clause (a) subject to the modification that references therein to Gaon Sabha and Gaon Panchayat shall be construed as

references to the Central Government.

(4) If only a portion of a Gaon Sabha area ceases to be included in rural areas as aforesaid, the jurisdiction of the Gaon Sabha constituted for that area shall cease in respect of that portion and upon such cesser, the provisions of Clause (a) to (f) of Sub-section (3) shall apply to that portion as if the Gaon Sabha had been constituted for that portion alone and dissolved, subject to such incidental and consequential orders as the Chief Commissioner may deem necessary to make.

(5) If the size of a Gaon Sabha area is reduced as a result of a portion thereof ceasing to be included in rural areas as aforesaid and the Chief Commissioner is of the opinion that the size of the Gaon Sabha area is not sufficiently large to be under the jurisdiction of a separate Gaon Sabha area is not sufficiently large to be under the jurisdiction of a separate Gaon Sabha, he may, by notification in the Official Gazette, declare that such Gaon Sabha area shall, from a date to be specified in the notification, cease to be a separate Gaon Sabha area and the Gaon Sabha area and the Gaon Sabha constituted there for shall stand dissolved any may direct that the said area shall be included in one or more adjoining Gaon Sabha areas, and thereupon, the provisions of Section 3 of the Delhi Panchayat Raj Act, 1954, shall, so far as may be, apply.]

14. Vehement contention of the learned Counsel for the Appellant is that even after a notification has been issued u/s 507(a) of the DMC Act, the Goan Sabha constituted in that area would stand dissolved but notwithstanding the said dissolution the provisions of Sections 84 to 86A of the DLRA would continue to apply and this is clear from the reading of Sub-section (f) of 150(3) of the DLRA.

15. This provision of law is contained in Chapter v. of the DLRA. It relates to the establishment and incorporation of the Gaon Sabha and Gaon Sabha Areas. Sub-Section 3 to 5 of Section 150 have been inserted by Section 28 of the DLRA (Amendment Act 1965). The reason for the insertion of these subsections as is evident from the Statement of Objects and Reasons appended to the bills are thus:

.... After the commencement of the Delhi Municipal Corporation Act, 1957, a number of villages which were under the jurisdiction has been urbanised and the Delhi Panchayat Raj Act, 1954 has ceased to apply to these area. However, the Gaon Sabha being corporate bodies continue to exist in these areas even though they have no panchayat functions. There is no provision in the existing law to wind up these bodies in the urbanised area but as an interim measure the management of their property in those areas has been entrusted to the Deputy Commissioner. It is necessary to make provisions for winding up the gaon sabhas. In urbanised areas and for the disposal of their assets and liabilities.

Sub-Section 3 enacts that if the whole of the Gaon Sabha ceases to be included in rural area as defined in the DMC Act 1957 by virtue of a notification u/s 507 of that Act, the Gaon Sabha constituted for that area shall thereupon stand dissolved. This Sub-section in fact lays down in Clauses (a) to (f) the

consequences which shall accrue on the dissolution of the Gaon Sabha on the whole area for which it was constituted ceasing to be included in rural areas. A whole some reading of this section (as quoted hereinabove) shows that the nomenclature of the Gaon Sabha and Gaon Sabha Areas have been changed and hereinafter all references made to Gaon Sabha and Gaon Panchayats would be construed as references to the Central Government. Section 150(3) specifically postulates that once a Gaon Sabha Area ceases to be included in rural area (as defined in the DMC Act, by virtue of a notification u/s 507(a) of the said Act) the Gaon Sabha will stand dissolved. Clause (e) states that the provisions of this Act (DLRA) would apply in relation to land in such Gaon Sabha, not being land vested in the Central Government under Clause (a). Sections 150(4) & (5) of the DLRA also clarify the position. After a portion of the Gaon Sabha ceases to be included as a rural area or the size of the Gaon Sabha is reduced as a result of a portion ceasing to be included in a rural area, the said portion or area will be reconstituted. The whole of Section 150 in fact deals with the establishment and incorporation of the Gaon Sabha and Gaon Sabha Area. It does not in any manner affect the provisions of Section 507(a) of the DMC Act which read with the ratio and the proposition of law laid down in *Trikha Ram* (supra) and *Indu Khorana* (supra) has held that once a rural area is declared to be urban, it is excluded from the purview of the "village abadi land" and being no longer "land" as defined in the DLRA it is excluded from its purview. Section 150 of the DLRA does not in any manner impinge upon this provision of law.

16. There is no perversity in the finding in the impugned judgment. Substantial question of law is answered in favour of the Respondent and against the Appellant. Appeal is dismissed.