
(2002) 09 DEL CK 0286
In the Delhi High Court
Case No : CW No. 3663 of 2001

Supriya Diwan and Others

APPELLANT

Vs

Sub Divisional Magistrate and Others

RESPONDENT

Date of Decision : 10-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Land Reforms Act, 1954 — Section 84, 85, 86A, 87
Delhi Land Reforms Rules, 1954 — Rule 170
Land Acquisition Act, 1894 — Section 3

Citation : (2002) 100 DLT 426

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : N.S. Vashisht, for the Appellant; Anil Sapra, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The petitioners have filed the present writ petition impugning the orders passed by the SDM in respect of the land in question. The petitioners own case is that they are in occupation of different portions of the said land and are using it for residential and commercial purposes. Undisputedly the land is meant for agricultural use.

2. The principal contention of learned counsel for the petitioners is that the petitioners have a right in the land in question in pursuance to the various powers of attorney executed by the Bhumidar and thus they cannot be ejected from the land in question without following the due process as laid down in the Delhi Land Reforms Act, 1954(hereinafter referred to as the Act) The attention of this court is invited to Sections 84 to 86A of the said Act in this behalf. Learned counsel for the petitioners contends that even a person taking or retaining possession of the land other than in accordance with the provisions of law where the land forms part of the Bhumidar's land must follow the due process.

3. It is relevant to note that the case set up in the writ petition is not that the

petitioners are purchasers of the land in question for valuable consideration and that in the absence of duly authorised documents title is derived in pursuance to such agreements coupled with powers of attorney. The claim in the petition is that the petitioners are holding the property on behalf of the Bhumidars. This is apparent from para 13 of the writ petition. Learned counsel for the petitioner states that it is an admitted position that the bhumidars of the land in question in their own right have challenged the impugned orders. However, that is a matter to be determined in the said writ petition as undoubtedly the bhumidars of the land have rights in the land and due compliance of the provisions of the Act has to take place before their ejection.

4. Thus the only question to be considered in the aforesaid factual matrix is whether the petitions also have a right to be issued the notice as contended by learned counsel for the petitioners. I am unable to accept the said submission of the learned counsel for the petitioners.

5. In order to appreciate the contention of the learned counsel for the petitioners a reference is to be made to Rule 170 of the Rules framed under the Act. The relevant portion of the Rule is as under:-

"When on the application from the Pradhan or any member of the Gaon Panchayat or the facts coming to his knowledge otherwise, the Revenue Assistant is satisfied that any person who is liable to ejection on suit of the Gaon Sabha otherwise than u/s 87 continues to be in possession of the land, otherwise than in accordance with the provisions of this Act or has transferred possession of the land to any other person, the Revenue Assistant may if he thinks that it is necessary so to do, issue notice to such persons and to every other person in possession thorough him of appear within a fixed time and to show cause why an order to ejection be not made against them. (2) The Gaon Sabha and all other persons interested in the land shall be made parties to all such proceedings.

6. The aforesaid rule shows that the Gaon Sabha and "all other persons interested" are to be made party to such proceedings. However, the case of the petitioners themselves is that they are "holding the property on behalf of the Bhumidars" which bhumidars as per the contention of the learned counsel for the petitioners have filed independent proceedings challenging the action in terms of the impugned orders. In my considered view thus the status of the petitioners is purely as a attorney acting on behalf of bhumidars and since the bhumidars have themselves availed of the remedy by filing the writ petition, I see no reason as to why the present writ petition filed by the petitioners should be entertained.

7. It is also relevant to note that there is no rejoinder filed to the averments made in the counter affidavit by the respondents despite opportunity granted to the petitioners.

8. Learned counsel for the petitioners has also sought to rely on the provisions of Section 3(b) of the Land Acquisition Act, 1894 to contend that the expression "person interested" as defined in the said Act can be conveniently imported for

determining the meaning of the expression under the said Act. Section 3(b) is as under:-

"Section 3(b): the expression "person interested" includes all person claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interest in an easement affecting the land;

9. I am unable to accept the submission of learned counsel for the petitioner since the definition u/s 3(b) of the Land Acquisition Act is for purposes of claiming compensation in respect of the land acquired. Further it is not the case set out in the petition that the petitioners have acquired any interest in the land, rather the petitioners case is that they are holding the property on behalf of the bhumidars.

10. In view of the aforesaid position I see no reason to exercise jurisdiction under Article 226 of the Constitution of India.

11. Dismissed.