

(2021) 12 DEL CK 0175

In the Delhi High Court

Case No : Civil Writ Petition No. 1940 Of 2021, Civil Miscellaneous Application
No. 5648 Of 2021

Utsav Exim Ltd

APPELLANT

Vs

Govt Of Nct Of Delhi

RESPONDENT

Date of Decision : 21-12-2021

Acts Referred:

Delhi Land Reforms Act, 1954 — Section 81

Delhi Municipal Corporation Act, 1957 — Section 507

Citation : (2021) 12 DEL CK 0175

Hon'ble Judges : Yashwant Varma, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Yashwant Varma, J

1. Heard learned counsel for parties.

2. The challenge in the present writ petition is to an order of 09 March 2020, passed by the District Magistrate acting as the appellate authority under the Delhi Land Reforms Act, 1954 [the DLR Act]. The facts on which there appears to be no dispute reveals that based on the report of a Halka Patwari that the land in question was being used for non-agricultural purposes, proceedings under Section 81 of the Act came to be instituted. In terms of the provisions of Section 81, a conditional order of eviction came to be passed on 27 June 2008. Although the petitioner was afforded an opportunity to restore the land to its original state, the respondents found that the same had not been availed of. Accordingly, the order of eviction was confirmed on 08 November 2016, and the land directed to be vested in the Gaon Sabha.

3. The order of the Appellate Authority is assailed by learned counsel for the petitioner who principally contends that no reasons at all have been assigned by that authority while proceeding to dismiss the appeal. It was further submitted

that although the attention of the appellate authority was duly drawn to a notification of 16 May 2017 issued under Section 507 of the Delhi Municipal Corporation Act, 1957 [the DMC Act] and which included village Paprawat, Najafgarh, New Delhi, that fact has been considered nor the impact of that notification on proceedings initiated under the DLR Act been evaluated. According to learned counsel, once the respondents had come to recognize that the area in question had been urbanized, proceedings under the DLR Act could not have been continued and the order of eviction as passed to be liable to be set aside. In support of the aforesaid submission, learned counsel has placed reliance upon the principle enunciated by the Court in Smt. Indu Khorana Vs. Gram Sabha and Ors 2010 SCC OnLine Del 1334.

4. Mr. Shadan Farasat, learned ASC appearing for the respondent, on the other hand, contends that notwithstanding the issuance of a notification under Section 507 of the D M C Act, 1957 in 2017, regard must be had to the fact that the petitioner had been found to have used the land in question for non-agricultural purposes since 2008. According to Mr. Farasat, it is this event alone which would constitute a cause of action for drawl of proceedings under Section 81 of the DLR Act, and once it has been found that the provision of the DLR Act had been violated at this stage itself, the subsequent notification issued under Section 507 cannot be viewed as extending relief to the petitioner in so far as the vesting of the land with the Gaon Sabha is concerned. It would be equally important to note the contention of Mr. Farasat, learned counsel, who submits that the appeal was merely a continuation of the proceedings which had been initiated in 2008 and thus a subsequent notification issued under Section 507 of the DMC Act would not impact the proceedings drawn or the orders passed against the petitioner.

5. Having heard learned counsel for parties, this Court notes that insofar as the impact of a notification under Section 507 of the DMC Act is concerned, the same has been consistently explained with this Court holding that once a particular area has come to be recognized as being urbanized, proceedings under the DLR Act can neither be initiated nor can they be possibly continued. Noticing the various decisions which were rendered on this issue, this Court in a recent decision in Smt. Sushma Kapoor v. Government of NCT of Delhi And Anr. 2021 SCC OnLine Del 5170, held thus:

"7. The Court further takes note of the consistent line taken in the body of precedents on this subject starting from the decision of the Division Bench in Smt. Indu Khorana Vs. Gaon Sabha (W.P.(C) 4143/2003 decided on 26 March 2010) and the subsequent decisions which were noticed in Sanraj Farms which have explained the concept of "land" as liable to be understood and interpreted under the provisions of the Act. The ratio of those decisions with respect to the applicability of the Act must be recognized to be that land in order to be made subject to proceeding under the Act must answer to the description as set forth in the Section 3(13) of the Act. As would be manifest from a reading of Section

3(13) of the Act, it is only land held or occupied for purposes connected with agriculture, pisciculture, horticulture, animal husbandry or poultry farming which could be subjected to proceedings under the Act. The decisions noted above have proceeded further to hold that once land has become urbanized and thus found to have been put to a use or purpose other than those mentioned above, it would clearly fall outside the purview and ambit of the Act. The judgments of the Court in unequivocal terms hold that once the property ceases to answer to the description of land as defined under the Act, proceedings can neither be initiated and if commenced must abate."

6. Notwithstanding the above, the Court also cannot lose sight of the fact that in the present case a conditional order of eviction had been made on 27 June 2008 and it was that order which was confirmed on 08 November 2016. The important question which would therefore arise for consideration would be whether an order of vesting which has attained finality prior to the issuance of the notification under Section 507 of the DMC Act can be said to have been nullified or for that matter reversed.

7. These and other issues which clearly arise in the facts of the present case do not appear to have been accorded any consideration by the District Magistrate. In view of the aforesaid, the Court is of the considered view that the matter would warrant being remanded to the appellate authority for considering the appeal of the petitioner afresh.

8. Accordingly, the writ petition is allowed. The impugned order of 09 March 2020 is quashed and set aside. The matter in consequence shall stand remitted to the Collector (South-West) who will consider the appeal of the petitioner afresh bearing in mind the observations made hereinabove. All contentions of respective parties in respect of the issues which arise and have been noticed above are kept open.

9. Bearing in mind the fact that an order of status quo was passed on this petition when it was initially entertained, that protection shall continue till the disposal of the appeal by the Collector (South-West). The Court requests the authority to dispose of the appeal expeditiously and preferably within a period of eight weeks from the date of communication of this order.