

Gajender Singh vs Government Of Nct Of Delhi & Ors on 27 May, 2022

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7194/2022 & CM APPL. 22038/2022

GAJENDER SINGH

Through: Mr. B.S. Maan and Ms
Advocates

versus

GOVERNMENT OF NCT OF DELHI & ORS.

Through: Mr. Shourya Dasgupta
Mr. Shadan Farasat,

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

% 27.05.2022

1. The instant writ petition under Articles 226 of the Constitution of India has been filed seeking following reliefs:-

i. Issue a writ, order or direction in the nature of prohibition thereby restraining the Respondent no.

2 from proceeding further in the proceedings pending before it U/s 81 of the Delhi Land Reforms Act, 1954, bearing Case no.

7596/SDM/Meh/2003/1249, titled as 'Gaon Sabha, Mehrauli Vs. Gajender Singh', in respect of petitioner's land comprised in Khasra no. 358 Min, situated in Village Mehrauli, New Delhi;

ii. issue a writ, order or direction in the nature of certiorari thereby quashing/setting aside the above proceedings for being null, non-est and void ab-

initio for patent lack of jurisdiction..."

2. It is submitted on behalf of the petitioner that the above proceedings are totally illegal, unlawful, null, void and non-est in law for the complete patent lack of jurisdiction of the respondent no. 2. It is submitted that the entire Village Mehrauli, wherein the above mentioned land in question is

situated was already urbanized by way of issuance of a notification dated 23rd May 1963 under Section 507A of the Delhi Municipal Corporation Act, 1957 (hereinafter "DMC Act") way back in the year 1963, consequent where to the land in question ceased to be an agricultural land governed or covered under the provisions of the Delhi Land Reforms Act, 1954 (hereinafter "DLR Act"). Post the issuance of said notification under Section 507A of DMC Act, the provisions of the DLR Act were/are no longer applicable to the land in question in any manner and the authorities created under the said Act also does not have any jurisdiction in relation to the land in question.

3. To strengthen his arguments, learned counsel has relied upon following judgments:-

(i) Indu Khorana vs. Gram Sabha & Ors 2010 SCC Online Del 1334;

(ii) Narain Singh & Ors vs. Financial Commissioner & Ors LPA No. 591/2008;

(iii) Gur Pratap Singh vs. UOI 2004(78) DRJ 621;

(iv) Shri Neelpadmaya Consumer Products Pvt Ltd vs. Satyabir 2016 SCC Online Del 761;

(v) Sanraj Farms Pvt Ltd vs. Charan Singh 2019 SCC Online Del 10741;

(vi) Sushma Kapoor vs. Govt of NCT of Delhi 2021 SCC Online Del 5170;

(vii) Sanvik Engineers India Pvt Ltd & Anr vs. Govt of NCT of Delhi 2022 SCC Online Del 360;

(viii) Saroj Kumar Gupta & Ors vs. Govt of NCT of Delhi being W.P. (C) No.5842/2022. decided by this Hon'ble Court vide order dated 08.04.2022.

4. Learned counsel for the petitioner submitted that the impugned notice that has been issued by the Sub-Divisional Magistrate/Revenue Assistant on the alleged ground that the land is being used for non-agriculture purpose in contravention of Chapter III-D of the DLR Act is wholly erroneous submitting to the effect that the land in question falls in village Mehrauli which is included in the list of villages in the Green Belt where "Low Density Residential Plots" are permitted. Details of the villages inclusive of the village Mehrauli is shown at serial no. 13 are placed on record in Annexure-II with the notification dated 18th June 2013. It is, thus, submitted on behalf of the petitioner that the land in village Mehrauli is no more an agricultural land and is not governed by the DLR Act.

5. Learned counsel for the petitioner submitted that the provisions of the DLR Act were never applicable to the land in question at any point of time whatsoever for the reason of exemption contained under Section 1 (2) (b) of the said Act and the same is a land governed and covered under the provisions of Punjab Land Revenue Act. It is further submitted that even assuming that the provisions of DLR Act ever applied to the land in question at any point of time, it is submitted that

much prior to the initiation of the impugned proceedings under Section 81 of DLR Act in the year 2003, the land in question was already urbanized way back in the year 1963 by virtue and operation of the Notification dated 23rd May 1963 issued under Section 507 A of the DMC Act and consequent thereto the provisions of the DLR Act, (if ever applicable at all to the land in question), ceased to apply to and/or govern the land in question in any manner, the same being no longer an agricultural/rural land. The land in question, thus, does not fall within the scope and purview of the said Act and provisions thereof are not applicable to the said land at all.

6. Learned counsel for the petitioner submitted that Hon'ble Court in above catena of cases, once the provisions of the DLR Act have already ceased to apply to any piece of land, then all/any proceedings initiated under the provisions of the said Act in respect of said land are null, non-est and void ab initio, thus, totally untenable in law.

7. It is inter alia submitted on behalf of the petitioner that the judgment of this Court in Sanvik Engineers (Supra), wherein a classification has been made of four broad heads in relation to the aspect of applicability of the DLR Act or otherwise which read to the effect:

"CASE 1 Where proceedings have not been initiated and notifications under the DMC/DDA Acts intervene.

CASE 2 Where although proceedings have been initiated or a conditional order made, notifications come to be issued before a final order directing ejectment and vesting is passed.

CASE 3 Where the notifications come to be issued after a final order of ejectment and vesting comes to be made.

CASE 4 Where a notification comes to be issued during the pendency of an appeal or revision against a final order at the behest of the landholder or Gaon Sabha. "

8. Having been submitted on behalf of the petitioner that the case of the petitioner falls in CASE No.1 which aspect was answered by the Coordinate Bench of this Court in Sanvik (supra) to the effect:

"CASE 1

53. Insofar as CASE 1 is concerned, this need not detain the Court since it was fairly conceded by the respondents that where no proceedings have been drawn or initiated under Section 81 prior to the issuance of the notifications, no authority or jurisdiction would be retained to invoke the same. This position clearly flows from the decisions of the Court that have been noticed above and which have consistently taken the view that once the land stands comprised in notifications issued under the DMC or the DDA Acts, it would stand excluded from the application of the DLR. This since it has ceased to answer to the description of land itself as defined in Section 3(13) of the

Act. The Court thus comes to the firm conclusion that once the area has come to be urbanized and stands comprised in notifications issued under the DMC or the DDA Acts, the respondents would stand denuded of all jurisdiction and authority to initiate proceedings under Section 81 of the Act thereafter. "

9. Learned counsel for the petitioner further submitted that the respondent authorities while initiating and continuing the impugned proceedings under Section 81 of the DLR Act despite the land in question being already urbanized much prior thereto in the year 1963 itself, have also acted in violation and contravention of the Circular dated 3rd July 2013 issued pursuant to the Cabinet decision clarifying in categorical terms that the provisions of the DLR Act shall not apply to an area which is urbanized by way of notification under Section 507 of the DMC Act and further directing all the Deputy Commissioners, Revenue Assistants and other revenue staff to take note of the said Cabinet decision and act accordingly.

10. In the fact and circumstances and the verdict of Sanvik (supra) and submissions made on behalf of learned counsel for the respondents, notice LR-48 dated 20th September, 2003 bearing case no.

7596/SDM/MEH/2003/1249 titled "Gaon Sabha, Mehrauli vs. Gajender Singh" is thus set aside and all consequential proceedings emanating therefrom are also set aside.

11. The petition is disposed of accordingly.

CHANDRA DHARI SINGH, J MAY 27, 2022 Aj/Ms