

# Som Prakash Gupta & Anr vs Government Of Nct Of Delhi & Anr on 2 June, 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) 9184/2022

SOM PRAKASH GUPTA & ANR

Through: Mr. Rajesh Yadav, Sr  
Mr. Dhananjay Mehla  
Digvijay Yadav, Adv

versus

GOVERNMENT OF NCT OF DELHI & ANR ..... Responde

Through: Mr. Anupam Srivastava, ASC with  
Ms. Savita Pandey, Advocate for  
GNCTD

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH  
ORDER

% 02.06.2022 Exemption allowed subject to just exceptions.

The application stands disposed of.

W.P.(C) 9184/2022 & CM APPL. 27589/2022

1. The instant writ petition under Articles 226 and 227 of the Constitution of India has been filed seeking following reliefs:-

"(a) issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof thereby quashing/setting aside the judgement dated 22.10.2021 passed by the learned Deputy Commissioner/Collector (South), M.B. Road, Saket, New Delhi- 110068, in appeal No. 70/2014, "Gaon Sabha Jonapur vs. Shilpa Gupta & Others ", being a nullity having been passed without jurisdiction..."

2. The petitioner purchased land measuring 1 Bigha and 17 Biswas, bearing Mustatil No. 23, Killa No. 12/3 (1-17), Village Jonapur, New Delhi, land measuring 4 Biswas, bearing Mustatil No.23, Killa No.12/2 (0-4), Village Jonapur, New Delhi, and half share in the land measuring 8 Biswas, bearing Mustatil No.23, Killa No.19/1 (0-4); village Jonapur, New Delhi, by way of registered sale deed dated 30th March, 2007. Petitioner No.2 purchased the land measuring 12 (e) Bighas and 10

Biswansis, bearing Mustatil No.23, Killa Nos.11 [(4-16) 1/2 share], 12/1 [(1-15) 1/2 share], 19/1 min (2-0), 20/1/1 (1-2), 20/2 (2-8), Mustatil No.24, Killa No.15/2 [(1-18) Y2 share], 16/1 (1-18), Mustatil No.23, Killa No.12/2 (0-8), situated in the Village Jonapur, New Delhi, vide sale deed dated 2nd November, 2007. Upon the purchase of the land, the same was mutated in the Revenue Records in their respective names.

3. On the basis of the report of Halqua Patwari dated 1st February, 2010, proceedings were initiated under Section 81 of the Delhi Land Reforms Act, 1954 (hereinafter "DLR Act"), against the petitioner, for using the concerned land for purposes other than agriculture, horticulture, animal husbandry, pisciculture or poultry farming. Notice in LR Form-48 was issued by the concerned SDM on 9th January, 2010.

4. The petitioners furnished their reply to the Show Cause Notice. Meanwhile, vide notification dated 18th June, 2013, Village Jonapur was declared a "Low Density Residential Area" in urban extension. Vide order/judgment dated 5th June, 2013, the SDM dropped proceedings under Section 81 of the DLR Act against the petitioners observing that the land was predominantly being used for agricultural purposes and construction of dwelling house over Khasra No. 16/1 is covered under Section 3(12)(1) of the DLR Act, which amounted to improvement. The said judgment of the SDM was challenged by the respondent no. 2 before the Deputy Commissioner/Collector (South), Saket, which was allowed vide the impugned order dated 22nd October, 2021.

5. It is submitted by the learned counsel for the petitioner that before the filing of the appeal against the order dated 5th July, 2013, the notification dated 18th June, 2013 was issued vide which the provisions of DLR Act ceased to apply from the very date of issuance to the concerned land.

6. It is inter alia submitted on behalf of the petitioner that the judgment of this Court in Sanvik Engineers India Pvt. Ltd. and Another vs. Government of National Capital Territory of Delhi, Through: Its Department of Urban Development and Another; 2022 SCC OnLine Del 360, 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. "

7. Having been submitted on behalf of the petitioner that the case of the petitioner falls in CASE No.4 which aspect was answered by the Coordinate Bench of this Court in Sanvik (supra) to the effect:

"CASE 4

68. Under this heading the Court deals with the impact of notifications issued under the DMC or the DDA Acts on pending appeals or revisions. The right to prefer an appeal is governed by Section 185 of the Act. That provision reads thus: -

"185. Cognizance of suits, etc., under this Act (1) Except as provided by or under this Act no court other than a court mentioned in column 7 of Schedule I shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) take cognizance of any suit, application, or proceedings mentioned in column 3 thereof. (2) Except as hereinafter provided no appeal shall lie from an order passed under any of the proceedings mentioned in column 3 of the Schedule aforesaid. (3) An appeal shall lie from the final order passed by a court mentioned in column 3 to the court or authority mentioned in column 8 thereof. (4) A second appeal shall lie from the final order passed in an appeal under sub-section (3) to the authority, if any, mentioned against it in column 9 of the Schedule aforesaid."

69. It becomes important to note that Section 185(2) is couched in negative terms and stipulates that no appeal shall lie from "an order" passed in proceedings mentioned in Column 3 of the Schedule appended to the Act. Contrary to the above, Section 185(3) and (4) lay emphasis on the words "final order" passed by a court or on an appeal respectively. The Legislature appears to have consciously made a distinction between "an order"

and a "final order". The intent clearly appears to be that an appeal or a second appeal or revision under the DLR would be maintainable only against a final order as distinct from one which is interlocutory. Insofar as it is relevant for our purposes, it may thus be clarified that the appeals envisaged under sub sections (3) and (4) of Section 185 would only be maintainable against a final order passed under Sections 81 and 82 of the DLR. In terms of the provisions made in Clause 17 of Schedule I, proceedings under Section 81 in the first instance are to be considered by the Revenue Assistant. An appeal against an order passed by the Revenue Assistant lies to the Deputy Commissioner and a second appeal thereafter to the Chief Commissioner."

8. Learned counsel for the petitioner submitted that since, no ejectment order was passed by the SDM concerned and subsequently the proceedings were also dropped against the petitioner, therefore, on the date of the notification, no final order of ejectment in place. Moreover, there were no proceedings pending before learned Deputy Commissioner/Collector on the date of the notification. Therefore, the CASE 4 will have no application as no final order was passed prior to 18th June, 2016.

9. The impugned order that has been passed by the learned Deputy Commissioner allowing the appeal by the respondents 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 Jonapur which is included in the list of villages where "Low Density Residential Plots" are permitted. It is, thus, submitted on behalf of the petitioner that the land in village Jonapur is no more an agricultural land and is not governed by the DLR Act. He has relied upon judgment of this Court in Smt. Sushma Kapoor vs Government of NCT of Delhi and Another; 2021 SCC OnLine Del 5170, submitting to the effect that once the fact of the land being covered under the notification of 18th June 2013 is ascertained and clarified and it thus falls in a "Low Density Residential Area" as admitted by the respondents herein, the proceedings under Section 81 of the DLR Act cannot continue. He has specifically relied upon paragraph 9 of the aforesaid judgment which reads as under:-

" 9. Once the fact of the land being covered under the notification of 18 June 2013 and covered under a Low Density Residential Area is admitted to the respondents, it is manifest that the proceedings initiated under the Act cannot be sustained. The Court also fails to find any merit in the contention of Ms. Takiar that the revenue authorities would still be empowered to enquire whether constructions were being raised without the requisite permissions as contemplated under the DMC or DDA Acts. Those enactments incorporate sufficient measures for enquiry and enforcement and independently confer powers in connection therewith upon statutory authorities other than revenue officials."

10. The notification in question governing the land dated 18 th June 2013 placed on record, categorically indicates to the effect that village Jonapur listed at serial No. 9 in the list of villages in the Green Belt where "Low Density Residential Plots" are permitted.

11. In the fact and circumstances and the verdict of Smt. Sushma Kapoor (Supra), and submissions made on behalf of learned counsel for the respondents, categorically not opposing the prayer made by the petitioner, the impugned order dated 22nd October, 2021, in appeal no. 70/2014 titled "Gaon Sabha Jonapur vs. Shilpa Gupta & Others" are thus set aside.

12. The petition is disposed of accordingly.

CHANDRA DHARI SINGH, J JUNE 2, 2022 dy/ms