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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 10th March, 2025

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W.P.(C) 11216/2018

YOGENDER KUMAR

.....Petitioner

Through: Mr. P.P. Malhotra, Senior Advocate
with Dr. Shailendra Sharma, Mr. Awijit,
Advocates with Petitioner's Son in Person.

versus

GOVERNMENT OF NATIONAL CAPITAL

TERRITORY OF DELHI & ORS

.....Respondents

Through: Mr. Rishikesh Kumar, ASC, GNCTD
with Ms. Sheenu Priya, Mr. Atik Gill, Mr. Sudhir
Kumar Shukla and Mr. Sudhir, Advocates for
GNCTD for R1 to R3.

Ms. Manika Tripathy, Standing Counsel with
Mr. Barun Dey and Mr. Vansh Kalra, Advocates
for DDA.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. This writ petition is preferred on behalf of the Petitioner laying a challenge to order and decree dated 14.09.2001 passed by Respondent No. 2 in *Case No. 151/RA/MT/2001 titled 'Gaon Sabha Bhalswa Jahangirpur v. Sh. Shiv Charan Singhal s/o Sh. Hari Ram Singhal, r/o A-20, Nanda Road, Adarsh Nagar, Delhi'*, alleging that the decree is *non est* and non-executable in the eyes of law.

2. Case of the Petitioner, as set up in the writ petition, is that Petitioner is the owner/*Bhumidar* in possession of all rights, title and interest in



agricultural land bearing Khasra No. 171, min (1-4), Village Bhalsawa Jahangirpur, Delhi, ad-measuring 1 Bigha 4 Biswa ('subject land'). It is averred that Smt. Anita Tyagi purchased the subject land through a registered Sale Deed dated 14.10.1997, executed in her favour by one Girish Chatwani, GPA holder of Sh. Shiv Charan Singhal, who was the owner of the subject land. Smt. Anita Tyagi executed an Agreement to Sell, Special Power of Attorney, General Power of Attorney, Possession Letter, Receipt and Will, all dated 12.05.2008, in favour of the Petitioner and since then he is in actual, physical and peaceful possession of the subject land.

3. It is averred that SDM/Revenue Assistant, Model Town erroneously passed an *ex parte* conditional order on 09.05.2001 in ***Case No. 151/RA/MT/2001 titled 'Gaon Sabha Bhalswa Jahangirpur v. Sh. Shiv Charan Singhal s/o Sh. Hari Ram Singhal, r/o A-20, Nanda Road, Adarsh Nagar, Delhi*** in proceedings initiated under Section 81 of the Delhi Land Reforms Act, 1954 (1954 Act) against Shiv Charan Singhal, who at that time was not the owner/*Bhumidar* since Smt. Anita Tyagi had already become the owner and was in possession in 1997 under a duly executed and registered sale deed. The order was based on the report of *Halka Patwari* that the land was put to non-agricultural use in contravention of Section 81 of 1954 Act. Shiv Charan Singhal was directed to convert the land to agricultural use within three months, failing which land would vest in the *Gaon Sabha* and Shiv Charan Singhal shall be ejected. This was followed by another *ex parte* final order dated 04.09.2001, whereby subject land was vested in *Gaon Sabha* and Shiv Charan Singhal was ejected, as Shiv Charan Singhal did not appear to contest the proceedings, having sold away the land to Smt. Anita Tyagi.



4. It is averred that Petitioner was completely unaware of these proceedings and learnt of the same only when he was impleaded as a party being the owner/*Bhumidar* of the subject land in a suit for ejectment and damages filed by Sh. Bishan Singh under Section 84 of 1954 Act against Smt. Anita Tyagi for part portion of the land and immediately on learning of the vesting and ejectment order/decreed, Petitioner approached this Court.

5. Mr. P.P. Malhotra, learned Senior Counsel for the Petitioner argued that the impugned *ex parte* order/decreed dated 14.09.2001 was passed against a wrong person, namely, Shiv Charan Singhal, who was neither the registered owner nor in possession of the subject land at the relevant time and had no right, title or interest in the subject land. Shiv Charan Singhal had already executed a registered Sale Deed dated 14.10.1997 in favour of Smt. Anita Tyagi after obtaining NOC No. 6174 dated 24.09.1997 from the concerned *Tehsildar*. Smt. Anita Tyagi sold the said land to the Petitioner by means of several customary documents and Petitioner became the *bonafide* purchaser of the land upon payment of sale consideration and has been in uninterrupted physical possession of the subject land since 2008. Since Shiv Charan Singhal had already sold the land, he naturally did not appear to contest the case under Section 81 of 1954 Act. Learned SDM/RA, however, ought to have exercised due diligence to ascertain the status of ownership of the land and issued notice to Smt. Anita Tyagi, before passing the impugned vesting and ejectment order. The impugned order/decreed deserves to be said aside having been passed without giving notice and an opportunity of hearing to the actual owner/*Bhumidar* of the subject land.

6. It was further argued that even on merit, the impugned order/decreed is untenable in law. 1954 Act was enacted to amend various land laws.



Section 23 thereof provides that a *Bhumidar or Asami* shall not be entitled to use his holding or part thereof for industrial purposes other than those immediately connected with any of the purposes referred to in Section 22, subject to other conditions mentioned therein and therefore, what is prohibited is only the industrial use of an agriculture land. Rule 21A of the Delhi Land Reforms Rules, 1954 ('1954 Rules') provides a procedure for the *Patwari* to render a report as soon as he learns that provisions of Section 23 have been violated and land is being used for non-agricultural purposes and it is thereafter that the *Tehsildar* causes a summary inquiry on the nature of conversion and submits the documents to the Revenue Assistant for orders. In the present case, as per the report of *Halka Patwari* rendered on 08.04.2000, what was allegedly constructed on the subject land was a room and there was not even an allegation of putting the land to industrial use. It was urged that construction of a room or boundary wall does not violate provisions of 1954 Rules and in support, reliance was placed on the judgment of the Division Bench of this Court in case titled, ***Bihari Lal & Others v. Union of India, etc., 1978 SCC OnLine Del 108***, wherein the Court held that mere construction of a building on agricultural land does not convert it into a non-agricultural use.

7. It was contended that no steps were taken by the learned SDM/RA for execution of the impugned order/decreed within the three years limitation period provided under the 1954 Act and thus any rights that Respondent No.2 had in the subject land stood extinguished. Even otherwise, subject land has been declared a private land vide Notification dated 12.12.2007 and *Gaon Sabha* has no jurisdiction in the matter thereafter. Petitioner has been in continuous use and occupation of the land since 2008 and no right can be



asserted on his private land. It was strenuously urged that Sections 81 and 82 of the 1954 Act are distinct and operate differently. Section 82(2) provides in no uncertain terms that where a decree for ejectment is passed, an opportunity shall be given to the owner of the land to rectify the defect within three months and decree shall not be executed except in respect of costs. Thus, in the present case, the decree cannot be executed as the same is silent on grant of opportunity under Section 82(2) as also being against a person who was neither the owner of the land nor in possession thereof, having sold the same to subsequent purchasers, at the relevant time.

8. It was argued that Respondents are wrongly questioning the *locus* of the Petitioner to file the present writ petition. Petitioner is a *bonafide* subsequent purchaser of the land and has every right to question the illegal vesting and ejectment order/decreed. The Supreme Court in *Suraj Lamp and Industries Private Limited (2) Through Director v. State of Haryana and Another, (2012) 1 SCC 656*, has recognised the validity of documents such as GPA, Agreement to Sell etc. for transfer of title of the land for the period prior thereto. Division Bench of this Court in W.P. (C) 7871/2014 was dealing with a challenge to the land acquisition by a subsequent purchaser and rejected the objection with respect to *locus standi* of the Petitioners therein, holding that no doubt Petitioners were claiming the relief on the basis of unregistered Agreement to Sell and GPA, but the documents were executed three decades back and the judgment in *Suraj Lamp (supra)* was based on unregistered power of attorneys and could only have a prospective effect. Dealing with the last objection of the Respondents that Petitioner has not availed the alternate remedy of filing an appeal and has directly filed a writ petition, Mr. Malhotra, learned Senior Counsel argued that the



impugned order is an *ex parte* order and no appeal lies against an *ex parte* order as per Rule 14 in Appendix VI, Part-A of the 1954 Act. In light of these submissions, it was urged that impugned orders and decree dated 14.09.2001 be set aside.

9. Mr. Rishikesh Kumar, learned ASC for Government of NCT of Delhi (GNCTD) argued that the present writ petition is not maintainable and Petitioner has no *locus* to challenge the order/decreed dated 14.09.2001. As per revenue record, Shiv Charan Singhal is the owner of Khasra No. 171, min (1-4) Village Bhalsawa Jahangirpur, Delhi, ad-measuring 1 Bigha 4 Biswa and neither Smt. Anita Tyagi nor the Petitioner are the recorded owners/*Bhumidars* of the subject land. Petitioner's entire case is predicated on an alleged sale in his favour by Smt. Anita Tyagi but this argument is of no avail to the Petitioner as even Smt. Anita Tyagi is not the recorded owner. Impugned order has been correctly passed against Shiv Charan Singhal, who was the owner/*Bhumidar* as per the revenue record.

10. It was argued that before passing the impugned order/decreed dated 14.09.2001, opportunity of hearing and rectification was given to the owner of the land inasmuch as first a conditional order was passed on 09.05.2001 and Shiv Charan Singhal was asked to convert the land use to agricultural use within three months, however, he neither appeared before the concerned SDM/RA (Model Town) nor the user was changed. Assuming Smt. Anita Tyagi had purchased the land, the onus was on her to take steps for mutation and seek change of entries in the revenue record. SDM cannot act beyond the entries in the revenue record.

11. It was further argued that Section 22(1) of the 1954 Act provides that every person obtaining possession on admission by the *Gaon Sabha* as



Bhumidar or *Asami* or by succession or by transfer other than a lease permitted under the 1954 Act of any land in a village which is required to be recorded in the register specified in Section 20, shall report such admission, succession or transfer to the *Tehsildar* and Section 22(5) provides that no Revenue Court shall entertain a suit or application by the person so succeeding or otherwise obtaining permission, or in the case of a lease, by the lessor until such permission has made the requisite report. It is clear that the procedure required under Section 22 was never followed by the Smt. Anita Tyagi and no report of the alleged transfer was ever made to the *Tehsildar* and since the revenue record only reflected Shiv Charan Singhal as the recorded owner/*Bhumidar*, notice was issued to him and conditional order was passed on 09.05.2001 giving time of 3 months to convert the convert the use of the land to non-agricultural use.

12. It was also contended that reliance of the Petitioner on the Notification dated 12.12.2007 is misplaced. Notification was issued to define Government/Public/Private lands in the context of regularisation of unauthorised colonies in Delhi pursuant to revised Guidelines-2007 issued by Ministry of Urban Development, Government of India and ‘private land’ has been defined as “*all lands vested in the Gaon Sabha under Section 81 of 1954 Act, where physical possession is with the original owner.*” The Notification has no relevance to the issues raised in the present petition and moreover, the recorded and original owner as per revenue record is Shiv Charan Singhal who did not appear before the SDM/RA to take a stand on transfer of ownership or possession. In fact, even in this writ petition, Petitioner has not impleaded Shiv Charan Singhal and/or Smt. Anita Tyagi, for reasons best known to him and thus, it is to be presumed that if



impleaded, they may not have supported the alleged sale/transfer of the subject land. Thus, in the absence of entry in the revenue record reflecting Smt. Anita Tyagi as the owner, the impugned order/decreed was rightly passed against the recorded owner/*Bhumidar* and no infirmity can be found in the same.

13. It was also urged that Petitioner has bypassed the remedy of appeal against the impugned order/decreed dated 14.09.2001 before the Court of Collector/Deputy Commissioner after which there was a remedy of revision before the Financial Commissioner and has directly filed this writ petition, in which in any case disputed facts cannot be adjudicated and on this sole ground the writ petition deserves to be dismissed.

14. Heard learned Senior Counsel for the Petitioner and learned counsels for the Respondents.

15. Petitioner is aggrieved by order/decreed dated 14.09.2001, whereby on account of user of the subject land for non-agricultural purposes and upon failure to re-convert the same for agricultural purposes by Shiv Charan Singhal, the subject land vested in *Gaon Sabha* and Shiv Charan Singhal, the recorded owner and *Bhumidar* in possession of the land as per revenue record, was ejected. Decree was directed to be drawn up for execution and implementation by the concerned *Tahsildar*. Broadly understood, case of the Petitioner is that Smt. Anita Tyagi purchased the subject land through a registered Sale Deed dated 14.10.1997 from Shiv Charan Singhal and became the registered owner of the property. When proceedings were initiated by the Respondents under Sections 81 and 82 of the 1954 Act, Shiv Charan Singhal was no longer the owner and notice ought to have been sent to Smt. Anita Tyagi as the land was transferred to her under a valid sale



deed, after obtaining NOC from the office of Respondent No. 2 on 24.09.1997 under Section 8 of Delhi Land (Restriction on Transfer) Act, 1972 (1972 Act) and thus the decree is *non est*. Petitioner asserts that having purchased the subject land from Smt. Anita Tyagi through legally valid customary documents such as Agreement to Sell, GPA, Will etc. on 12.05.2008 and being the owner and in actual, physical and peaceful possession of the land, Petitioner has every right and locus to file this writ petition and challenge the *ex parte* order/decreed dated 14.09.2001. Petitioner also asseverates that under Section 23 of 1954 Act, it is only industrial use of agricultural land which is prohibited and in which case the *Halka Patwari* can lodge a report under Section 81, but in the present case, in its report dated 08.04.2000, *Halka Patwari* alleged construction of a room only, which cannot be violation of Section 81 in terms of Section 23 of the 1954 Act. Petitioner also asserts that after expiry of limitation period to execute the decree, the same cannot be executed.

16. Case of the Respondents is that as per revenue records, Shiv Charan Singhal was the owner/*Bhumidar* of the subject land and therefore before passing a conditional order on 09.05.2001, notice was sent to Shiv Charan Singhal and he was directed to re-convert the use to agricultural use. He chose to remain absent and contest the case and as no action was taken by him to convert the land to agricultural use, the vesting/ejectment order was rightly passed by the concerned SDM/RA. Reliance was placed on the *Khatoni* for the year 1991-92 to establish that Shiv Charan Singhal was the actual land owner/*Bhumidar* and the argument was that this position obtained on the date of the decree and continues till date and there was no reason or obligation to issue notice to anyone but the recorded



owner/*Bhumidar*.

17. Having examined the rival contentions, Court finds merit in the stand taken by the Respondents. Indisputably, as per revenue record, Shiv Charan Singhal was the recorded owner/*Bhumidar* of the subject land and in cultivatory possession. *Khatoni* for the year 1991-92 reflects this position and Petitioner has not placed any material on record to show that entry in the revenue record changed anytime thereafter. In fact, even in the present petition, Petitioner does not plead or show that Smt. Anita Tyagi was the recorded owner/*Bhumidar* of the subject land in the revenue record after allegedly purchasing the land from Shiv Charan Singhal, at the time when the impugned order/decreed was passed. Under Section 5 of 1954 Act, *Bhumidar* is a person belonging to any of the classes i.e. proprietor holding *sir* or *khudkasht* land, a proprietor's grove holder, an occupancy tenant under Section 5 of the Punjab Tenancy Act, 1887, paying rent at revenue rates or a person holding land under *Patta Dawami*, [or *Istamrari*] with rights of transfer by sale, who are declared *Bhumidars* on the commencement of this Act; every class of tenants other than those referred to in clause (a) and sub-tenants who are declared *Bhumidars* on the commencement of this Act; or every person who, after the commencement of this Act, is admitted to land as *Bhumidar* or who acquires *Bhumidari* rights under any provisions of this Act. Under Section 22(1) of 1954 Act, every person obtaining possession on admission by *Gaon Sabha* as *Bhumidar* or *Asami* or by succession or transfer of any land in a village, which is required to be recorded in the register, shall report such transfer or succession to the *Tehsildar*. In the present case, the sale transaction was not reported to the *Tehsildar* on execution of the sale deed and no steps were



taken by Smt. Anita Tyagi to seek mutation of subject land. Thus, the learned SDM/RA rightly issued notice to the recorded owner in possession and proceeded to pass the impugned order/decreed, when he chose not to appear and contest the case and/or re-convert the land to agricultural use. There was no reason why the SDM/RA should have notified Smt. Anita Tyagi before passing the impugned order as she was not the recorded owner/*Bhumidar*, which really is the primordial plank of Petitioner's case.

18. Much emphasis was laid by the learned Senior Counsel on the rights of the Petitioner flowing from the GPA/Agreement to sell etc., executed by Smt. Anita Tyagi in his favour and her alleged title/ownership to the subject land emanating from the sale deed executed in her favour by original recorded owner. It is strange that Petitioner has not impleaded Smt. Anita Tyagi and Shiv Charan Singhal as party Respondents in the present petition and during the course of hearing, on an objection being raised to the non-joinder, it was asserted that since relief was claimed against the revenue authorities and the sale transactions were undisputed, both of them are neither necessary nor proper parties. In my view, Petitioner is not correct that Smt. Anita Tyagi and Shiv Charan Singhal are not necessary or at least proper parties to the *lis*. In their absence, it is not known why the two chose not to contest the proceedings under Section 81 of 1954 Act and/or whether Shiv Charan Singhal informed Smt. Anita Tyagi of the proceedings on receipt of the notices and if so, why she did not contest or why Smt. Anita Tyagi took no steps to seek mutation and correct and update the revenue record. Resistance of the Petitioner to implead the two, is not understandable and there is non-joinder of necessary parties.



19. Learned Senior Counsel for the Petitioner is correct in his submission that mutation of property in revenue records does not create or extinguish title to the property and the entry is relevant only for the purpose of collecting land revenue. [*Ref. Balwant Singh and Another v. Daulat Singh (Dead) by LRs. and Others, (1997) 7 SCC 137*]. In *Suraj Bhan and Others v. Financial Commissioner and Others, (2007) 6 SCC 186*, the Supreme Court reiterated that entry in revenue records does not confer title on a person whose name appears in record-of-rights and has only fiscal purpose i.e. payment of land revenue. Therefore, this proposition put forth on behalf of the Petitioner is beyond any debate. The question, however, is whether in the absence of a change in the revenue record, which till date records and reflects Shiv Charan Singhal as the recorded owner/*Bhumidar* in possession, Respondents could be faulted for not sending notice to Smt. Anita Tyagi and/or granting her an opportunity of personal hearing and the answer is a clear 'no'. If the grievance of the Petitioner is that he had validly and *bonafidely* purchased the land through legally valid and acceptable documents from Smt. Anita Tyagi, then the remedy lies in perfecting his title and it is a settled law that title disputes can only be decided by competent Civil Court. In my view, on the basis of the alleged GPA, Agreement to Sell, Will etc. purportedly executed by Smt. Anita Tyagi, Petitioner cannot challenge the vesting order on the ground that no notice was issued to her by the SDM/RA. In light of this position, this Court is not delving into the argument on merit that under Section 23 of the 1954 Act, only putting the land to industrial use is an embargo.

20. Insofar as the issue of the subject land being a 'private land' in terms of Notification dated 12.12.2007 is concerned, suffice it is to note that the



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Notification was issued to define Government/Public/Private lands in the context of regularisation of unauthorised colonies in Delhi pursuant to revised Guidelines-2007 issued by Ministry of Urban Development, Government of India and ‘private land’ has been defined as “*all lands vested in the Gaon Sabha under Section 81 of 1954 Act, where physical possession is with the original owner*”, as rightly placed by the Respondents and has no relevance to the impugned order/decre.

21. For all the aforesaid reasons, this writ petition challenging the vesting/ejectment order/decre has no merit and is dismissed. Petitioner will be at liberty to take recourse to any other appropriate remedies before the appropriate forum, if so advised.

JYOTI SINGH, J

MARCH 10, 2025/shivam