

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 14031/2006 **Date of decision: 29th January, 2010**

ALL HEAVENS RESORTS INDIA LTD. Petitioner
Through Mr. Anurag Kumar Aggarwal and
Mr. Umesh Mishra, Advocates.

versus

GAON SABHA KHERA KHURD & ORS. Respondent
Through Mr. Som Dutt Kaushik, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

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Admit. With the consent of the parties, the matter is taken up for final disposal.

2. Pursuant to the direction given on the last date of hearing, counsel for the respondent has produced before this Court, the original records of proceedings under Section 81 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as the Act).

3. On the basis of newspaper report and site inspection, proceedings under Section 81 of the Act were initiated against the petitioner on the ground that he had changed the land use and was misusing the agricultural land by operating a resort by the name of All Heavens Resorts with facilities like hotel, conference hall, swimming pool etc.

4. The petitioner was duly served and appeared before the Revenue Assistant/SDM, Narela on 16th January, 1998, when a written application for adjournment was filed by Mr. Rajiv Gupta on behalf of himself, Ramesh Gupta and Pradeep Gupta. On this application itself, an order directing that the case would come up for hearing on 21st January, 1998, was passed. However, on 21st January, 1998 and 2nd February, 1998, no hearing was held as the Presiding Officer was held up and busy. On 27th February, 1998, the petitioner was not present but one Mr. Uttam Chaudhary appeared. The Presiding Officer noticed that no reply was filed and request for adjournment by Mr. Uttam Chaudhary was declined. A conditional order was passed under Section 81 of the Act.

5. I am not inclined to go behind this order. The original file reveals that there were documents on record in the form of newspaper report and

inspection report in the form P-4 to establish that there was a banquet hall, which had been constructed on the agricultural land. Counsel for the petitioner does not dispute that the banquet hall existed on the disputed agricultural land and agricultural land was being used for the said purpose. In fact, the contention of the counsel for the petitioner is that immediately after the conditional order was passed on 27th February, 2008, the land use was changed in conformity with the provisions of the Act.

6. As per the order dated 27th February, 1998, the case was to come up for further proceedings on 27th May, 1998. There is no order sheet for the date 27th May, 1998. Next order sheet available is dated 8th February, 1999. As per the said order sheet, when the matter was called no one was present and no Presiding Officer was posted. Accordingly, the Reader adjourned the case to 23rd March, 1999. On 23rd March, 1999 again no one was present on behalf of the petitioner and the Presiding Officer was on leave. In the said order, it is recorded that the case had not proceeded further w.e.f. 27th February, 1998 and the matter was directed to be listed for further proceedings on 8th April, 1999. On 8th April, 1999, 14th May, 1999 and 27th May, 1999, the case could not be taken up for hearing as the

Presiding Officer was busy. The order sheets record that no one was present on behalf of the petitioner.

7. On 24th June, 1999, the matter was taken up and it was noticed that there was no appearance on behalf of the petitioner. The Presiding Officer recorded that conditional order was passed on 27th February, 1998 and the site would be inspected on 28th June, 1999. The case was fixed for orders on 29th June, 1999.

8. The next order sheet dated 29th June, 1999 records that Mr. Rajiv Gupta was present on behalf of the petitioner. The order sheet further records that there was non-compliance of order dated 27th February, 1998 as the agricultural land was being used in violation of Section 81 of the Act. A speaking order was passed on the same date observing that the Presiding Officer had inspected the site on the 28th June, 1999 and noticed that petitioner herein had failed to convert the land back to agricultural use.

9. It is a contention of the counsel for the petitioner that Mr. Rajiv Gupta was not present on the said date. He further states that no notice was issued after 27th May, 1998. It is noticed that signatures of Mr. Rajiv Gupta do not appear in the said order sheet. In the order dated 27th

February, 1998, signatures of Mr. Uttam Chaudhary are available. It is a contention of the counsel for the petitioner that after the conditional order was passed, they had stopped misusing the land and the said land was being used for agricultural purposes. It is stated that the petitioner had no notice of proceedings fixed on 29th June, 1999 as after 27th February, 1998 no further proceedings were held.

10. The admitted position is that on 27th February, 1998, conditional order was passed under Section 81 of the Act and the matter was directed to be listed on 27th May, 1998. The matter was not taken up for hearing on 27th May, 1998. After 27th February, 1998, the matter was taken up for hearing on 8th February, 1999 and as noticed above no one had appeared for the petitioner thereafter till 29th June, 1999. No further notice was given or issued to the petitioner after 27th May, 1998.

11. Presence and appearance of Mr. Rajiv Gupta on 29th June, 1999 is disputed by the petitioner. The impugned order dated 29th June, 1999 does record presence of Mr. Rajiv Gupta but his signatures are not available in the order sheet. It is noticed that as per the impugned order, the Presiding Officer had inspected the land on 28th June, 1999. However, it is

not stated in the impugned order that Mr. Rajiv Gupta was informed about the hearing fixed on 29th June, 1999 at the time of inspection. It is not stated how Mr. Rajiv Gupta came to know about the hearing fixed on 29th June, 1999, when admittedly prior to the said date no one was appearing for the petitioner. Order under Section 81 of the Act has serious adverse consequences. In these circumstances, the impugned order dated 29th June, 1999 passed by the Revenue Assistant, order dated 29th November, 2002 passed by the Collector, District North-West and order dated 1st August, 2006, passed by the Financial Commissioner are set aside and the matter is remanded back to the Revenue Assistant, Narela for passing of fresh order after giving hearing to the petitioner.

12. The petitioner will appear before the Revenue Assistant on 22nd February, 2010 at 11 A.M., when a further date for hearing will be given. The petitioner will file relevant documents available with them including the audited balance sheet, profit and loss account, and copy of the income tax returns to establish that they were not running the banquet hall after passing of the conditional order dated 27th February, 1998. Copy of the site inspection report, if any, will be given to the petitioner.

The writ petition is disposed of. In the facts and circumstances of the case, there will be no order as to costs.

SANJIV KHANNA, J.

JANUARY 29, 2010

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