

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

% Order Reserved on: October 20, 2011
Order Pronounced on: October 31, 2011

+ **W.P.(C) No.6213/2000**

ANUP SINGH Petitioner
Through: Mr. Ashok Sapra, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mr. V.K.Tondon, Advocate.

W.P.(C) No.6214/2000

ANUP SINGH Petitioner
Through: Mr. Ashok Sapra, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Ms. Naina Bajaj, Advocate for
Ms.Amita Gupta, Advocate

W.P.(C) No.6263/2000

ANUP SINGH Petitioner
Through: Mr. Ashok Sapra, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Ms. Naina Bajaj, Advocate for
Ms.Amita Gupta, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | } | No. |
| 2. | To be referred to Reporter or not? | | |
| 3. | Whether the judgment should be reported in the Digest? | | |

SUNIL GAUR, J.

1. Above titled 3 writ petitions relate to 3 different parcels of land situated in the revenue estate of village Dichaon Kalan, Delhi. On 4.7.1995 petitioner had purchased vide 3 different sale deeds, 3 parcels of land i.e. 4 *bighas* of land in *Khasra* No. 8/25, 17/5 from *Bhumidar*- Suraj Bhan, s/o Sh. Birkha, which is subject matter of W.P.(C) No.6213/2000; 4 *bighas* and 16 *biswas* of land in *khasra* No. 8/16, 8/25 from *Bhumidar* – Risala s/o Sh. Rati Ram, which is the subject land in W.P.(C) No.6214/2000 and the subject matter of W.P.(C) No. 6263/2000 is 4 *bighas* of land in *Khasra* No.18/24, 17/4 which was purchased from *Bhumidar*- Roshan Lal s/o Sh. Mange, situated in the aforesaid village.

2. Since these 3 petitions arise out of common impugned order of 24.4.2000 and because submissions advanced are identical, therefore these 3 petitions are being disposed of vide this common order.

3. On the strength of the aforesaid 3 Sale Deeds of 4.7.1995, petitioner had got the subject land mutated in his favour from *Tehsildar, Najafgarh*, Delhi on 26.7.1995, which

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was successfully challenged by Sh. Suraj Mal, ex *Pradhan* of the village Dichaon Kalan, and the Appellate Authority vide order of 26.10.1999 had set aside the mutation of the subject land in favour of the petitioner and had reverted the subject land back to *gaon sabha*, while holding as under:-

'I find that the suit land was allotted under the provisions of Section 73/74 of the Act. In these three cases, the allottees were declared as bhoomidhars whereas in one case which is subject matter of appeal no.484/97 was declared as asami. The allottees were declared bhoomidhar/asami with the condition that they will not dispose off the land and if they do so the land shall be reverted back to gaon sabha. The allottees transferred the land in favour of Sh.Anoop Singh by way of registered sale deed in violation of the restriction imposed upon them.

The allottees accepted the bhoomidari whereas not obeyed the liabilities imposed upon them. Such type of option is not available with them. The basic purpose of allotment of land under 20 point Programme the landless harizans was to uplift the weaker sections of society. If they are allowed to transfer the land, they will again become landless and will again claim for such allotment thereby making a mockery of the intent and policy of the Govt.. therefore, the allottees are declared bhoomidhar subject to condition that they will not transfer the land.'

4. The aforesaid order of 26.10.1999 of the Appellate Authority was challenged before the Financial Commissioner, Delhi, who vide impugned order of 27.4.2000, has upheld the order of the Appellate Authority.

5. Is the restriction imposed upon the landless persons who had been allotted *gaon sabha* land under the Government's 20 point programme, not to alienate such land, violative of the

Fundamental Rights of such persons or is contrary to any provision of the Delhi Land Reforms Act, 1954 is the central issue raised in these petitions.

6. According to the petitioner's counsel, the concept of non-transferability of *bhumidari* rights is alien to the Delhi Land Reforms Act, 1954 and so imposition of such a prohibition while conferring *bhumidari* rights on such Allottees of *gaon sabha* lands under Government's 20 point programme, is *per se* bad in law as Section 31 of Delhi Land Reforms Act, 1954 permits a *bhumidar* to transfer his interests in the land allotted to him and since none of the conditions as stipulated in Sections 33 to 42 of the Delhi Land Reforms Act, 1954 have been violated, therefore, the impugned order deserves to be set aside and the order of 26.7.1995 of the *Tehsildar*, Najafgarh, Delhi, ought to be restored.

7. Learned counsel for the respondents submit that the issue raised in these petitions stands covered by a decision of this Court rendered by Hon'ble Mr. Justice A.K.Sikri in '**Shri Pawan Kumar Vs. Financial Commissioner, Delhi & Ors.**' 2003 IV AD (Delhi) 265, in which reliance has been placed upon decision of the Apex Court in '**Murlidhar Dayandeo Kesekar Vs. Vishwanath Pandu Barde & Anr.**' JT 1995 (3) S.C. 563 and the decision in '**Nathu Vs. Hukum Singh**' AIR 1988 Delhi 216, as well as other decisions on the subject have been appropriately dealt with and so in the light of the aforesaid decision in *Pawan Kumar (Supra)*, these petitions deserve rejection.

8. The facts are not in dispute. Petitioner had purchased the subject land from the Allottees, who were declared *bhumidars*

vide order of 21.8.1987 (Annexure-I) with a specific rider which reads as under:-

*'In view of the above facts, I order that the applicant be declared bhumidar of the land mentioned above. I further Order that the allottee shall not dispose of the land and will use it for the agriculture purpose as defined in the DLR Act. He shall also deposit land revenue in time as applicable. **The suit land shall not be transferable. If it is found that the violation is being done by the applicant, the said bhumidari rights shall be treated as extinguished and the land will be treated as if it has been reverted back to Gaon Sabha'***

9. Writ of mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the Statute. This view is endorsed by the Apex Court in **Secretary, Cannanore District Muslim Educational Association, Kanpur Vs. State of Kerala and Ors.**, 2010 (5) SCALE 184, while quoting Professor De Smith, who in *Judicial Review of Administrative Act* 4th Ed. p.540 had stated as under:-

"To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract."

10. It was emphasized by the Apex Court in the aforesaid decision that judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances.

11. At the hearing, learned counsel for the petitioner had drawn the attention of this Court to various Sections of Delhi

Land Reforms Act, 1954 and in particular to Sections 5, 6, 31, 32 and 74 of this enactment to assert that there is no bar upon a *bhumidar* to alienate such lands and so, order of 21.8.1987 putting an embargo upon alienation of *bhumidari* lands allotted under the Delhi Land Reforms Act, 1954, is a nullity and had relied upon decision of the Apex Court in '**Kiran Singh & Ors. Vs. Chaman Paswan & Ors.**' AIR 1954 SC 340, to assert that plea of invalidity of a null and void order can be set up whenever and wherever required.

12. The aforesaid contention deserves to be noted, only to be rejected out rightly, as there is no challenge to the order of 21.8.1987 prohibiting alienation of subject lands in these petitions. Otherwise also, even if a challenge is made to the aforesaid order of 21.8.1987, still it would be futile because imposition of such embargo upon alienation of such *gaon sabha* land to the landless under the Government's 20 point programme with a rider not to alienate it, has been upheld in a well considered decision of this Court in **Pawan Kumar (Supra)**, while observing as under:-

'Thus clear mandate of the Supreme Court in the aforesaid judgment was that such a grant to the landless labourers was of their economic upliftment and thus sale by such applicants would not be permissible as it would defeat the very purpose of grant of land to such landless labourers.'

13. During the course of hearing, learned counsel for the petitioner could not distinguish the aforesaid dictum rendered in **Pawan Kumar (Supra)**, nor could cite any decision to the contrary. Undisputedly, in the instant case, the *bhumidars* were allotted the subject land under the Government's 20

point programme with the aforesaid rider with a laudable object of uplifting the weaker sections of the society and if such allottees are permitted to transfer such lands, it would defeat the very purpose of these allotments. Strangely, petitioner has not placed on record the order of 26.7.1995, vide which the *Tehsildar*, Najafgarh, Delhi had mutated the subject land in favour of the petitioner in express violation of the afore-noted rider prohibiting alienation of the subject land. Finding no apparent error in the impugned order, this Court refuses to invoke its jurisdiction under Articles 226 or 227 of the Constitution of India.

14. Since the issue raised in these petitions is squarely covered by the lucid decision rendered in ***Pawan Kumar*** (*Supra*), therefore, finding no merit in these petitions, the same are dismissed with no order as to costs.

(SUNIL GAUR)
JUDGE

October 31, 2011

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