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

Judgment delivered on: 31st July, 2014

+ W.P.(C) 8659/2004

BABU RAM

..... Petitioner

Represented by: Mr. N.S. Dalal, Adv.

versus

GOVT. OF NCT OF DELHI AND ANR.

.....Respondents

Represented by: NEMO.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition, petitioner is seeking direction to the respondents directing them not to dispossess him from the land comprising in Khasra No. 23 /25 (4-16), situated in the Revenue Estate of Village-Naya Bans, Delhi without following due process of law as provided under Delhi Land Reforms Act and Rules, 1954.

2. Mr. N.S. Dalal, Ld. Counsel appearing on behalf of the petitioner submits that petitioner was a landless person, therefore, respondent no. 2 vide its resolution dated 15.11.1984 allotted the aforementioned land to him for cultivation.

3. Accordingly, the petitioner deposited lease money of Rs.40/- for the same vide receipt LR Form-37, under Rule 174 of Delhi Land

Reforms Rules.

4. Mr. Dalal further submits that said land was barren, however, petitioner made it fit for cultivation. Thereafter, petitioner has been continuously in physical cultivation possession of the land in question till date.

5. He further submits that on 30.04.2004, a person claimed himself as Secretary, Panchayat of respondent no. 2 came upon the land of the petitioner and informed him that the land is going to be fenced as per the directions of the BDO. Accordingly, on 15.05.2004, petitioner visited the Office of respondent nos. 2 and 3 and enquired about the status of the land. He was informed that land has been in the name of Gaon Sabha and it will take forcible possession of the land in question.

6. The respondents filed counter-affidavit to the instant petition which has been sworn by Mr. K.S. Chugh, BDO, North District and has admitted in Para 8 of the counter-affidavit that the petitioner was given land by Gaon Sabha vide decision taken in the meeting of Gaon Sabha on 15.11.1984. In the said meeting, it was decided to lease 52 Bigha and 10 Biswa land in possession of the Gaon Sabha for 10 to 11 months to increase the income of Gaon Sabha.

7. It is further averred that petitioner got land in Khasra No. 23/25 4-16) @ Rs.40/- per year under lease deed only for 11 to 32 months and the lease was never renewed. Therefore, after completion of 10-11 months from the date of lease, the land automatically reverts back to Gaon Sabha. Hence, the petitioner is an encroacher of the land.

8. Admittedly, the petitioner is in the possession of the land from the date of its allotment till date. If by due process of law it is established that the petitioner is an encroacher, accordingly respondents are at liberty to take possession of the land as per law.

9. Settled law is that no-one can be thrown out from the land allotted without due process of law. Moreover, Section 74 (iv), Section 84 and Section 85 Delhi Land Reforms Act, 1954 prescribed as under:

“74 (4):

At the end of five years, the Gaon Sabha shall report to the Revenue Assistant the extent to which reclamation has been made. The Revenue Assistant shall, after necessary enquiry and after hearing the Asami, either order the termination of the lease and his ejectment if there has been no reclamation on extent his lease for another period of two years. If, however, the land has been duly reclaimed during the period of five years or the extended period, the Revenue Assistant shall direct the Gaon Sabha to admit the Asami as Bhumidhar under section 73. The Asami on his admission as Bhumidhar shall be liable to pay such land revenue as shall be equal to 50 percent, of the rent together with cesses and local rates, but he shall not be liable to pay any compensation.

84. Ejectment of persons occupying land without title. -

(1) A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, and

(a) Where the land forms part of the holding of a Bhumidhar or Asami without the consent of such Bhumidhar or Asami, or

(b) Where the land does not form part of the holding of a Bhumidhar or Asami without the consent of the Gaon Sabha. Shall be liable to ejectment on the suit of the Bhumidhar, Asami or Gaon Sabha, as the case may be and shall also be liable to pay damages.

(2) *Where any person against whom a decree for ejectment from any land has been executed in pursuance of a suit under subsection (1) re-enters or attempts to re-enter upon such land otherwise than under authority of law, he shall be presumed to have done so with intent to intimidate or annoy the person in possession or the Gaon Sabha, as the case may be, within the meaning of section 441 of the Indian Penal Code (on 45 o 1860).*

85. Failure to file suit under section 84 or to execute decree obtained thereunder. – *If a suit is not brought under section 84 or a decree obtained in any such suit is not executed within the period of limitation provided for the filing of the suit or the execution of the decree, the person taking or retaining possession shall—*

- (i) *Where the land forms part of the holding of a Bhumidhar, become a Bhumidhar thereof;*
- (ii) *Where the land forms part of the holding of an Asami on behalf of the Gaon Sabha, become an Asami thereof;*
- (iii) *In any case to which the provisions of clause (b) of (Sub-section 1) of Section 84 apply, become a Bhumidhar or Asami as if he had been admitted to the possession of the land by the Gaon Sabha.*

Provided that if in the revenue records of the fasli year ending on the 30th June, 1954, the land referred to in clause (iii) was not included in the holding of the person taking or retaining possession or his predecessor-in-interest, or was not recorded as being in the cultivation of such person or his predecessor-in-interest, then, notwithstanding the expiry of the aforesaid period of limitation for such suit or decree, the suit may be filed or the decree obtained in such suit may be executed within a period of three years from the date of passing of the Delhi Land Reforms (Amendment) Act, 1965.

Provided further that the benefit of the extension of the period of limitation under the preceding proviso shall not be availed of in any case where a person who has become a Bhumidhar in respect of

any land under clause (iii) has transferred such land to another person for valuable consideration before 10th May, 1965.

10. In view of above, respondents are restrained from interfering in the possession of the petitioner in the land in question with liberty to take action as per law.

11. Accordingly, the petition is allowed on above terms.

SURESH KAIT, J

JULY 31, 2014

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