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

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Judgment Reserved on: 04.12.2019

Judgment Pronounced on: 28.02.2020

+ W.P.(C) 10731/2015

MAHENDER

..... Petitioner

Through Ms.Nidhi Jain and Ms.Sarita Rout,
Advocates

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through Mr.Gautam Narayan, ASC for GNCTD
with Ms. Shivani Vij, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This writ petition is filed by the petitioner seeking to challenge the order dated 12.10.2015 passed by the Deputy Commissioner and order dated 25.6.2014 passed by the SDM/Revenue Assistant thereby allowing the proceedings initiated against the petitioner under Section 86A of the Delhi Land Reforms Act, 1954 (hereinafter referred to as DLR Act) and directing dispossession of the petitioner from the said land situated at village Jhuljhuli, New Delhi.

2. I may note that this Court has already dealt with a connected writ petition being ***Mahender v. Govt. of NCT of Delhi and Ors., WP(C) 12371/2019*** pronounced on 31.01.2020. The facts of the present case are virtually identical as that of WP(C)12371/2019. The same facts are relevant here and are repeated herein below from the Judgment dated 31.1.2020:-

"2. The facts show a long history of events commencing from 1984. The petitioner states that he was allotted land being 38/4, 4 bighas, 16 biswas in Gaon Jhuljhulli by the Gaon Sabha of the said village. It is pleaded that under the 20-point programme of the Central Government, the village Panchayats prepared lists of villagers, who fulfilled the criteria. Vide Resolution dated 12.07.1984 held under the Chairmanship of the Deputy Director Panchayat, the enlisted villagers were allotted one acre land each. It is pleaded that the petitioner thereafter became *Assami* of the respondents. The allotments are also said to have been approved by Resolutions dated 12.09.1984 and 27.09.1984 of the Gaon Sabha. Possession of the land was handed over vide Resolution dated 30.10.1984. It is pleaded that the petitioner has been in possession of the said land and continues to cultivate the same till date. The land was *banjar* and the petitioner made the land cultivable by hard work, day and night. Thereafter, the petitioner applied to the revenue authorities for recording possession and cultivation in the revenue records in favour of the petitioner relying upon Section 74 (4) of the Delhi Land Reforms Act, 1954. It is stated that the Patwari carried out an inspection of the land on 08.03.1991 and confirmed the possession of the petitioner; however, the possession of the petitioner was not recorded in the khasra girdawari.

3. Aggrieved by the above act of the respondents, the petitioner along with 25 similarly placed villagers filed a writ petition before this court being W.P. (C) No.245/1992. This court appointed a Local Commissioner to inspect the land. The Local Commissioner confirmed the possession of the petitioner and that the same was being used for agricultural purposes.

4. The respondents had filed a counter-affidavit in the said writ petition (W.P. (C) 245/1992). In the said counter-affidavit, the respondents took the plea that the Director Panchayat at no point of time gave his sanction as required under Rule 178 of the Delhi Panchayat Raj Rules, 1959 (hereinafter referred to as the 1959 Rules). Hence, the possession of the petitioner was illegal. The writ petition was disposed of on 14.08.2001 and this court

directed the respondents to record the possession of the person who is cultivating the fields at the spot in accordance with the provisions of the Act and the rules framed there under.

5. It is the grievance of the petitioner that as steps were not taken to comply with the said order dated 14.08.2001, a contempt petition was filed. On 05.12.2002, in the said petition, the court recorded the statement of the respondents that the revenue authorities shall take action to record the possession of the petitioner in the revenue records in accordance with the said judgment. It is pleaded that instead of complying with the said order dated 14.08.2001, the Halka Patwari gave a report for initiation of eviction proceedings under Section 86A of the DLR Act against the petitioner. The respondents also filed an affidavit in the contempt petition that necessary action for recording of unauthorized possession of the petitioner and others have taken place by filing Form P-5A by the Halka Patwari. It is also stated that action under Section 86A of the DLR Act has also been initiated. The contempt petition was disposed of on 25.03.2003.

6. The grievance of the petitioner is that the respondents under the direction of the Deputy Commissioner struck off the name of the petitioner from the revenue record without granting an opportunity of being heard. Further, it was claimed that the petitioner had been in possession of the said land since five years as *Assami* and had also reclaimed the land. Hence the petitioner was entitled to be admitted as *bhumidar* under Section 74(4) of the DLR Act. It is also pleaded that the proceeding initiated by the respondents under Section 86A of the DLR Act are barred by time and hence, are not maintainable. The petitioner also initiated proceedings under Section 74(4) of the DLR Act.

7. The petitioner filed another writ petition being W.P. (C) No.6978/2009 before this Court. While disposing of the said writ petition, a direction was passed vide order dated 01.12.2010 that the revenue court before whom proceedings are pending under Section 74 (4) and Section 86A of the DLR Act should dispose of

the said proceedings within nine months. It was further directed that both the proceedings were to be taken up simultaneously.

8. Pursuant to the above directions, on 25.06.2014, the SDM dismissed the application of the petitioner under Section 74 (4) of the DLR Act. An ejectment order was passed against the petitioner and 25 others under Section 86A of the DLR Act.

9. Against the aforesaid order dated 25.06.2014, the petitioner filed an appeal under Section 187 of the DLR Act before the Deputy Commissioner. Similar appeals were also filed by the other aggrieved villagers. As no interim orders were passed, it is stated that the Tehsildar malafidely sought to handover the possession of the land to the BDO on 12.11.2014. It is claimed that the report of the Tehsildar is false as possession of the said land is still with the petitioner and the crops are standing on the said land.

10. Pursuant to another writ petition filed by the petitioner in this court being W.P. (C) No.8347/2014 and directions issued thereof, the Deputy Commissioner disposed of the appeals filed by the petitioner and 25 other villagers by a common order dated 12.10.2015. By the said order, the Deputy Commissioner upheld the order passed by the SDM and dismissed the claims of the petitioner under Section 74 (4) of the DLR Act for *bhumidhari* rights and allowed ejectment of the petitioner under Section 86A of the DLR Act.

11. Against above order under Section 86A of the Act, as no further appeals lie in the proceedings under the DLR Act, the petitioner filed a writ petition being W.P. (C) No.10594/2011 (i.e. the present writ petition) along with 25 other villagers. Regarding dismissal of proceedings under Section 74 (4) of the DLR Act, the petitioner filed a second appeal before the Financial Commissioner. The Financial Commissioner dismissed the appeal of the petitioner on 04.10.2019 i.e. the impugned order. (in that writ petition)"

3. As is apparent from the above, the present writ petition pertains to the impugned order dated 12.10.2015 passed by the Deputy Commissioner whereby the Deputy Commissioner has dismissed the appeal of the petitioner and upheld the eviction of the petitioner from the land in question allotted under Section 86A of the Delhi Land Reforms Act, 1954. I may note that order dated 12.1.0.2015 deals with two separate proceedings- namely an order passed against the petitioner dismissing the proceedings initiated by the petitioner under Section 74(4) of the DLR Act and the order passed against the petitioner under Section 86A of the Act ordering eviction of the petitioner. The order dated 12.10.2015 was challenged to the extent that it dealt the proceedings initiated by the petitioner under Section 74(4) of the DLR Act and has already been dealt with by the Financial Commissioner vide order dated 4.10.2019. The same was also dealt with by this Court in WP(C)12371/2019 in the order dated 31.1.2020. Both the proceedings i.e. the appeal and the writ petition filed by the petitioner have been dismissed. This petition deals with part of the impugned order which was passed under Section 86 A of the DLR Act initiated by the Gaon Sabha Jhuljhuli.

4. I have heard learned counsel for the parties.

5. Learned counsel appearing for the petitioner Ms.Nidhi Jain, Advocate has urged as follows:

(i) It is urged that the petitioner was put in possession of the allotted land on 30.10.1984. The eviction proceedings have been initiated by the respondent in 2002/January 2003. It is urged that this is much beyond the limitation period prescribed in Schedule 1 to the DLR Act for initiating proceedings under Section 86A of the said Act. The period of limitation was one year and has expired long back. Hence the proceedings were barred by

limitation.

(ii). It is further averred that the respondent admit that the petitioners are alleged to be in illegal occupation of the land since 1984. Therefore, the respondent had knowledge of the alleged illegal occupation. Further, the petitioner has taken various steps including approaching the respondents in 1989 to be declared as Bhumidars. At all the stages, the respondents failed to initiate appropriate proceedings.

(iii). Reliance is also placed on the report of Local Commissioner dated 26.2.1992 who was appointed by this Court. It, as stated, that the report has confirmed that the petitioners are in possession of the suit land and crop is standing on the land.

(iv). It is further averred that the petitioners have been in possession of the land for 35 years. The respondent did a hogwash exercise and prepared a bogus report claiming that they have taken over possession in November 2011. It is pleaded that the petitioner remains in possession of the land.

6. Mr.Gautam Narayan, Advocate learned counsel appearing for the respondents reiterates as follows:

(i) The possession of the land has already been obtained on 12.11.2014 and has been handed over to the BDO(SW). The petition is hence infructuous.

(ii) It is also pleaded that the petitioner had filed a writ petition seeking declaration of **Bumidari** rights. This court was on 26.2.1992 pleased to pass an order protecting the possession of the petitioners. The writ petition was disposed of on 14.8.2001. Hence the possession of the petitioner was protected from 26.2.1992 till 14.8.2001 by an interim order passed by this Court. The proceedings under Section 86A of DLR Act were commenced on

30.12.2002, and hence, are not barred by limitation.

(iii) It is further pleaded that the petitioners were in illegal occupation of Gaon Sabha land and proceeding for eviction had been rightly initiated. Reference is made to the judgment of the Supreme Court in the case of '**Jagpal Singh & Ors vs. State of Punjab & Ors.**' (2011)11 SCC 396 where the Supreme Court issued specific directions to the State Governments to devise schemes for eviction of illegal and unauthorised occupants from Gaon Sabha or Gram Panchayat land. It is pleaded that the respondent has acted in terms of the said directions.

7. I may, first, look at the impugned order dated 12.10.2015 to the extent it deals with the Appeal filed by the petitioner with regard to proceedings under Section 86A of the DLR Act. The Deputy Commissioner in the impugned order notes that the land has been wrongly allotted to persons who already are in possession of substantial holdings. It is stated that these allotments are in violation of law and null and void in the absence of the approval of the competent authority. It also pleaded that there is no valid or legal allotment in favour of the petitioner. It is also pleaded that the period of limitation will not apply to a case of encroachment on Gaon Sabha land by a rank trespasser. Hence, the learned Deputy Commissioner concludes that the claim of the petitioners of the proceedings under Section 86 A being barred by time is incorrect as the petitioner has been found to be in illegal possession of the Gaon Sabha land. The status of the petitioner is that of an encroacher and hence the ejection order passed for such land was held to be valid.

8. Section 86A of the DLR Act reads as follows:

"86A. Ejectment by Revenue Assistant of persons occupying land without title. - Notwithstanding anything contained in section

84, 85 and 86, the Revenue Assistant also may, on receiving information or on his own motion, eject any person who is liable to be eject from any land on a suit of the *Gaon Sabha* under any of those sections, after following such procedure as may be prescribed."

9. Limitation period is provided by Schedule I read with Section 185. The limitation for proceedings under Section 86A are given in Schedule I which reads as follows:

SCHEDULE 1
(Section 185)

Sl.No.	Section of the Act	Description of suit application and other proceedings	Period of Limitation	Time from which period beings	Proper Court fees	Court of original jurisdiction	Court of	
							1st Appeal	2nd Appeal
1.	2.	3.	4.	5.	6.	7.	8.	9.
20A.	86A	Proceedings for ejectment of persons occupying land without title.	Same as that provided for a suit under section 84, 85 or 86, as the case may be.	Same as that provided for a suit under 84, 85 or 86, as the case may be.	Nil.	Revenue Assistant.	Deputy Commissioner.	..]

10. Perusal of the above provision show that proceedings under Section 86A for ejectment of persons occupying land without title, limitation period is provided which is the same as provided under Section 84, 85 and 86 of the Act. Limitation period for Section 84, 85 and 86 are stated as follows:

SCHEDULE 1
(Section 185)

Sl.No.	Section of the Act	Description of suit application and other proceedings	Period of Limitation	Time from which period beings	Proper Court fees	Court of original jurisdiction	Court of	
							1st Appeal	2nd Appeal
1.	2.	3.	4.	5.	6.	7.	8.	9.
19	84	Suit for ejectment of a						

		person occupying land without title and damages.						
		(i) by <i>Bhumidhar</i> declared under Chapter III of the Act or by an <i>Asami</i> falling under section 6 of the Act where such unlawful occupant was in possession of the land before the issue of the prescribed declaration form;	Three years.	From the date of issue of the prescribed declaration form to the tenure-holder or the sub-tenure-holder concerned.	-do-	-do-	-do-	..
		(ii) by a <i>Gaon Sabha</i> where the unlawful occupant was in possession of the land before the constitution of <i>Gaon Panchayat</i> .	-do-	From the date of constitution of <i>Gaon Panchayat</i> under section 151.	-do-	-do-	-do-	...
		(iii) By a <i>Bhumidhar</i> , <i>Asami</i> or <i>Gaon Sabha</i> in any other case.	Three years.	From the 1st of July following the date of occupation.	As in the Court Fees Act, 1870.	Revenue Assistant.	Deputy Commissioner.	.]
19A.	85	Suit for ejectment of a person referred to in the first proviso.	-do-	From the date of passing of the Delhi Land Reforms (Amendment) Act, 1965.	-do-	-do-	-do-	..]
20.	86	Suit for ejectment of a <i>Bhumidhar</i> to	One year.	From the date of acquiring <i>Bhumidhari</i>	-do-	-do-	-do-	..

		whom clause (i) of section 85 applies.		rights				
20A.	86A	Proceedings for ejectment of persons occupying land without title.	Same as that provided for a suit under section 84, 85 or 86, as the case may be.	Same as that provided for a suit under 84, 85 or 86, as the case may be.	Nil.	Revenue Assistant.	Deputy Commissioner.	..]

11. Hence, limitation period is either three years or one year as the facts may warrant w.e.f. the day as stated in column No.5. Proceedings initiated under Section 86A would hence be subject to stated limitation period.

12. The impugned order passed by the learned Deputy Commissioner to the extent that it completely ignores the said provisions of law regarding limitation period prescribed suffers from manifest error. The impugned order merely states that the petitioners are in illegal occupation and no period of limitation would apply for such illegal encroachment. It fails to give any reasons for such a conclusion. The finding in the impugned order to the extent is clearly erroneous and is liable to be set aside.

13. I may also note that it is settled position of law that the issue of limitation is a mixed question of fact and law. In this context, reference may be had to the judgment of Supreme Court in the case of **Ramesh B. Desai & Ors. v. Bipin Vadilal Mehta & Ors., (2006) 5 SCC 638**, where the court held as follows:

“19. A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is a mixed question of law and fact. The question whether the words “barred by law” occurring in Order 7 Rule 11(d) CPC would also include the ground that it is barred by law of limitation has been recently

considered by a two-Judge Bench of this Court to which one of us was a member (Ashok Bhan, J.) in *Balasaria Construction (P) Ltd. v. Hanuman Seva Trust* [(2006) 5 SCC 658] it was held: (SCC p. 661, para 8)

“8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time.”

This principle would be equally applicable to a company petition. Therefore, unless it becomes apparent from the reading of the company petition that the same is barred by limitation the petition cannot be rejected under Order 7 Rule 11(d) CPC.”

14. Clearly, in view of the above stated position the concerned functionaries should have gone into the facts to determine as to whether the proceedings under section 86A of the DLR Act were within the period of limitation. The fact that there are disputed questions of fact is obvious. The petitioners claim the alleged illegal occupation of the properties since 1984. The respondents claim that they have already taken over the possession of the property in 2014 rendering the proceeding under Section 86A of the DLR Act as redundant. They also state that there were interim orders passed by the Court for substantial period and hence the proceedings initiated by Gaon Sabha are within the limitation period. It would be for the learned SDM/Revenue Assistant to go into all these aspects and pass appropriate orders as per law.

15. I also refer a judgment of a Co-ordinate Bench of this court in the case

of **Jugal & Ors. v. Dy. Commissioner & Ors.**’ (2003) 106 DLT 288. In that case the Co-ordinate Bench was dealing with proceedings under section 86A initiated for ejectment wherein it was claimed that the construction in question was 25-30 years old. The Co-ordinate Bench held as follows:

“6. The difficulty in the present case in sustaining the impugned Order, as I perceive it, is that no evidence appears to have been recorded. This may be a consequence of the erroneous legal assumption, that the burden of proof rested on the Petitioner to prove that the property in question was 25-30 years old. Mr. Ramesh Chandra, learned Senior Counsel for the Petitioner, states that no evidence was produced and that there is not even a perfunctory statement to the effect that the property in question or the encroachment was less than three years old. A reading of the Report of the Halqu Patwari as also the subsequent Report of the Patwari does not disclose that the opinion of these officials was that the offending construction was contrary to the information given to them. It is this state of affairs which leads to the conclusion that there is a miscarriage of justice. The burden of proof may shift to the Petitioner but that could have happened only when there is at least a positive albeit a bald statement that the illegal construction or the trespass was less than three years old. It is certainly arguable that inasmuch as the statute provides the same period of limitation for action under Section 86A as under the preceding Sections, an anomalous situation has arisen. This is for the reason that one of the conditions envisaged in Section 86A is the failure of the Gaon Sabha to take requisite action and that would only occur after the period of three years has elapsed. But even if the most enabling interpretation is to be imparted, there cannot be any possibility of enabling the action taken by the Revenue Assistant after six years of the said events. However, this is not the only source of the powers in jurisdiction of the Revenue Assistant as he can independent of Section 84 and 85 initiate proceedings against unlawful occupation and need not await action by the Gaon Sabha.”

16. It is clear from the aforesaid judgment that the source of powers of the Revenue Assistant also exists independent of sections 84 and 85 to initiate proceedings against unlawful occupation. It would also have to be determined by the SDM/Revenue Assistant as to whether the petitioner according to the respondent are rank trespassers can only be evicted through proceedings under the Delhi Land Reforms Act or can be evicted otherwise.

17. I accordingly set aside the order of the Deputy Commissioner dated 12.10.2015 and of the SDM/Revenue Assistant dated 25.06.2014 to the extent that it has dealt with the proceedings initiated against the respondents under Section 86A of the DLR Act. Rest of the said order of the Deputy Commissioner has already been confirmed by the order of the Financial Commissioner and then by this Court in the judgment dated 31.1.2020.

18. The proceedings of the respondents under section 86A of the DLR Act are remanded back for afresh consideration by the SDM/Revenue Assistant as per law. Parties will appear before the SDM on 16.03.2020. The SDM is requested to expeditiously dispose of the matter within one year from the date of the receipt of this order.

19. The petition stands disposed of.

JAYANT NATH, J.

FEBRUARY 28, 2020/raj/v