
Jawahar Singh and Others Vs Financial Commissioner and Others

Writ Petition (C) 3274 of 1992

Court: Delhi High Court

Date of Decision: Aug. 17, 2007

Acts Referred:

Constitution of India, 1950 " Article 226, 227#Criminal Procedure Code, 1973 (CrPC) " Section 145, 145(1), 146, 146(2)#Delhi Land Reforms Act, 1954 " Section 185, 2(1), 22, 23, 3(2)#Delhi Land Revenue Rules, 1962 " Rule 144, 145#East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 " Section 21#Penal Code, 1860 (IPC) " Section 441#Punjab Tenancy Act, 1887 " Section 5

Citation: (2007) 144 DLT 53 : (2007) 4 ILR Delhi 112

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: O.N. Vohra and Shradha Bhargava, for the Appellant; Lata Krishnamurthy, P.R. Mala, Manoj Tyagi, Saurabh, Ajay Gupta and Manoj Kumar, for the Respondent

Final Decision: Allowed

Judgement

S. Muralidhar, J.

This writ petition challenges an order dated 13.8.1992 passed by the Financial Commissioner as well as an order dated

5.6.1992 passed by the Additional Collector, Delhi allowing the appeal filed by the respondent No. 3 Jaipal Singh u/s 185 of the Delhi Land

Reforms Act, 1954 (DLRA) and setting aside an order dated 16.8.1989 passed by the Sub-Divisional Magistrate (SDM)/Revenue Assistant

(RA). The finding returned by the Additional Collector, as affirmed by the Financial Commissioner, was that the respondent No. 3 was in physical

and cultivatory possession of land bearing kila No. 16/22, 23, 24, 21/22, 4 and 5/19/2 in village Jhatikara, Delhi ("the land in question") and was

in possession thereof even prior to its sale in favor of the petitioners herein and that respondent No. 3 was Therefore entitled to the grant of

bhumidari rights in respect the land in question.

Background facts

2. The facts leading to the filing of this writ petition are that Smt. Kalawati wife of Shri Khacheru was the owner of 372 bighas of agricultural land

in village Jhatikara. She had two daughters - Smt. Parmeshwari and Smt. Ramanandi. Smt. Parmeshwari had two sons - Shri Dharam Pal and Shri

Jaipal. In the year 1940, Smt. Kalawati gifted a half share in the land held by her in favor of Dharampal. With the enactment of DLRA on

20.7.1954 Smt. Kalawati and Dharampal became joint bhumidars of the land in equal shares.

3. In 1958 Smt. Kalawati made a gift through a registered deed in respect of her remaining half share in the joint holding in favor her grandson Shri

Satya Dev who was at that time the minor son of her other daughter Smt. Ramanandi. This gift deed was executed on 24.12.1958. In the

consolidation proceedings that took place in 1970-71 in village Jhatikara, the land in question was allotted to Shri Satya Dev and he was also put

in possession thereof in the repartition proceedings u/s 21 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948

("Holdings Act"). With the death of Shri Satya Dev in 1974, the land in question was mutated in favor of his parents Shri Haranand and Smt.

Ramanandi.

4. It appears that on 4.1.1975 a rojnamcha report was prepared by the then RA Shri Y.D. Venkata in which he noted that Shri Haranand and

Smt. Ramanandi were bhumidars of the land in question but that Shri Jai Pal was cultivating it.

5. On 27.8.1979, Shri Haranand and Smt. Ramanandi executed an agreement in favor of the four petitioners whereby the land in question was

agreed to be sold to the petitioners for a sum of Rs. 33,760/-. A sum of Rs. 7,000/- was recorded to have been received by the vendors as

earnest money and the balance was to be paid at the time of registration of the sale deed. This was followed by the registration of the sale deed on

11/18.9.1979 whereby the land in question was sold to the petitioners. Simultaneously, the mutation was carried out on 18.9.1979 in respect of

the land in question as is evident from the copy of the report of the Patwari which has been enclosed with the writ petition.

6. On the same date i.e. 18.9.1979 Smt. Kalawati made a complaint to the Station House Officer, P.S. Najafgarh stating that she was a bhumidar

in respect of the land in question and in cultivatory possession through Shri Jai Pal along with his brother Shri Dharam Pal both of whom were the

sons of Smt. Parmeshwari, her daughter. In the complaint she claimed that the gift deed was got executed in 1985 in respect of the land in question

in favor of Shri Satya Dev when she (Smt. Kalawati) was suffering some mental disorder but that she remained in possession of the land in

question throughout.

7. Meanwhile, pursuant to the mutation carried out on 18.9.1979, further proceedings took place. The procedure in terms of Sections 22 and 23

DLRA read with Rules 144 and 145 of the Delhi Land Revenue Rules, 1954 (DLRR) was followed. The statutory notice was issued and

objections invited. It is stated that objections were filed by Smt. Kalawati through her attorney Smt. Parmeshwari, but were later withdrawn by

Shri Dharam Pal on 23.11.1979. On 7.12.1979, an order was passed by the Tehsildar confirming the mutation in respect of the land in question in

favor of the petitioners here. This order was not challenged thereafter.

8. Meanwhile, on Smt. Kalawati's criminal complaint, a preliminary order was passed on 12.3.1981 by the SDM stating that pursuant to a police

report dated 26.10.1979 a dispute regarding the land in question which was likely to cause breach of peace existed among the parties i.e. Smt.

Kalawati as complainant and the petitioners here as the opposite parties. Both parties were directed to appear before the SDM on 24.3.1981. The

SDM proceeded to pass a further order on 5.4.1981 in which he observed that there appeared to be a conflict of entries made by the Patwari one

in favor of Shri Jai Pal and the other in favor of Shri Jawahar Singh and others and that the documents do not help in establishing their cultivatory

possession. The SDM observed in the order that the whole matter had become explosive after the incident of 2.3.1981 and the recent incident

where Shri Jai Pal had prevented Shri Jawahar Singh from harvesting the wheat crop on the land in question. Accordingly, the SDM recorded that

the situation was one of emergency requiring immediate action. He appointed the Naib Tehsildar as receiver u/s 146(2) CrPC.

9. Certain contempt proceedings were thereafter initiated by Shri Jai Pal on 20.5.1981 against the girdawar Shri Hem Chandar. It was claimed by

Shri Jai Pal that the girdawar had struck off the entry regarding the adverse possession of Shri Jai Pal on 18.4.1981 without even visiting the

village. The SDM held by the order dated 16.11.1981 that the girdawar should not have taken precipitate action when the possession of the land

was disputed and the property was under attachment. The girdawar was warned to be careful in future and the proceedings were dropped.

10. On 28.10.1980 an application was filed by Shri Jai Pal u/s 85 DLRA in the Court of the SDM/RA, Punjabi Bagh against the petitioners here

praying that Shri Jai Pal should be declared bhumidar in respect of the land in question. In the application, Shri Jai Pal asserted that he was in

actual cultivatory possession of the land in question exclusively since the last 10 years and further that his possession was continuous and without

the consent of the recorded bhumidars.

11. Smt. Kalawati died on 12.6.1981. 10 days previous to this date, on 2.6.1981, the petitioners here filed a written statement in the proceedings

u/s 145 Cr.P.C. claiming that they were in actual physical and cultivatory possession of the land in question since the date of its purchase by them.

In this written statement, it was asserted that the kharif crop of 1979 was being cultivated by the petitioners here and thereafter, the entries in the

khasra girdawari had been effected in their favor. The copies of the khasra girdawari for the kharif crop of 1979-80, 1980-81 and for rabi crop of

1981 were attached. It was stated that the electricity connection for the tube well was also granted in favor of the petitioners in 1981. It was

pointed out that a suit had been filed by Shri Jai Pal against the petitioners in the Court of the Sub-judge for a permanent injunction to restrain the

petitioners from interfering with the possession of Shri Jai Pal of the land in question on 25.10.1980. However, no interim injunction was granted

and ultimately, the suit was dismissed in default on 21.11.1980. Simultaneous with the filing of the suit, the application u/s 85 was also filed. An

interim order passed in the first instance got vacated when an application was filed by the petitioners here. The appeal filed by Shri Jai Pal against

this order was also dismissed by the Additional District Judge.

12. A written statement was also filed by Shri Dharam Pal on 21.9.1981 and by Shri Jai Pal on 25.6.1981. It was asserted in the written

statements that Shri Jai Pal was in possession of the lands in question. It was claimed that objections filed Smt. Kalawati had been decided by the

Tehsildar on 7.12.1979 on the basis of a fabricated letter produced by Shri Jawahar Singh and without notice or intimation to Smt. Kalawati or her

attorney Smt. Parmeshwari Devi.

13. On 12.8.1985, the SDM passed a final order in the proceedings u/s 145 CrPC. The SDM Shri G.S. Chaturvedi concluded that up to the visit

of the SDM on 4.1.1975, Shri Jai Pal was having physical and cultivatory possession. However, it was difficult to say as to who was enjoying the

physical and cultivatory possession of the land thereafter. The SDM held that the presumption was in favor of Shri Jai Pal. He accordingly directed

that the possession of the land in question be handed over to Shri Jai Pal. By a separate order the SDM allowed an application filed by

Respondent No. 3 challenging the entries made in favor of the petitioners in the revenue record.

14. A third order was passed by the SDM on the same date i.e. 12.8.1985, dismissing the application filed by the respondent No. 3 Shri Jai Pal

u/s 85 DLRA. The SDM held in these proceedings that since Smt. Ramanandi and Shri Haranand had not been made parties, the application was

not maintainable.

15. Against the dismissal of the application u/s 85 by the SDM on 12.8.1985, Shri Jai Pal filed an appeal u/s 185 DLRA before the Additional

Collector. The Additional Collector by the Order dated 26.5.1988 held that in view of the fact that the petitioners here were shown as bhumidars

in the khasra girdawari of 1980-81, the SDM was not justified in dismissing the suit for non-joinder of Smt Ramanandi and Shri Haranand. He also

referred to the fact that on the same date in the application filed by Shri Jai Pal for corrections of the khasra girdawari had been allowed by the

SDM. In the proceedings u/s 145 the SDM had found that possession was with respondent No. 3. Accordingly, the Additional Collector set aside

the order dated 12.8.1985 of the SDM and declared respondent No. 3 to be the lawful bhumidar of the suit in question.

16. Aggrieved by the order dated 26.5.1988 of the Additional Collector, the petitioners here filed a second appeal before the Financial

Commissioner. After over-ruling the preliminary objection raised by respondent No. 3 about the maintainability of the appeal, the Financial

Commissioner by his order dated 11.11.1988 held that neither the decision in the proceedings u/s 145 CrPC nor the decision ordering corrections

in entries in the khasra girdawari could have application in regular proceedings u/s 85 DLRA involving a question of title. It was recorded in the

order of the Financial Commissioner dated 11.11.1988 that both counsel agreed to the above proposition. The Financial Commissioner then

proceeded to hold that due notice had to be given to the petitioners here which had not been done in the proceedings before the Additional

Collector and further that the Revenue Assistant should have, in the first instance, framed the issues to be decided. It was further directed that since

neither party had raised any point whether the application before the RA was maintainable without impleading necessary parties, the order of the

Additional Collector to this extent would remain undisturbed and the dispute was required to be decided by the RA afresh in between the parties in

question i.e. Shri Jai Pal one the one hand and the petitioners on the other.

17. In the remanded proceedings the SDM/RA passed a fresh order dated 16.8.1989 holding that no case was made out in favor of Shri Jai Pal

for declaration of bhumidari rights or for adverse possession. The SDM referred to the statements made by the witnesses including that by the

Patwari who stated that he was present when mutation was carried out in favor of Shri Jawahar Singh in 1980 and that he had seen the parties

appending their signatures on the P-5 form. The SDM concluded that no objection had been raised by Shri Jai Pal when the mutation was carried

out in favor of Shri Jawahar Singh and the other petitioners. He further noticed that the order passed in the proceedings u/s 145, was directed to

be operative only till such time the issue was decided by the competent Court. Accordingly, the SDM passed the order that the proceedings u/s

145 CrPC should cease to operate and that the possession should be now handed over to the petitioners here.

18. Aggrieved by the order dated 16.8.1989 of the SDM Shri Jai Pal Singh filed an appeal before the Additional Collector. By an order dated

5.6.1992, the Additional Collector reversed the order of the SDM. The Additional Collector once again referred to the observations made by the

SDM on 4.1.1975 as well as the order dated 12.8.1985 passed in the proceedings u/s 145 CrPC. He also relied upon the order passed in the

application made by Shri Jai Pal for correction of the entries.

19. The petitioners' further appeal to the Financial Commissioner was dismissed by the impugned order dated 13.8.1992.

Submissions of the parties

20. Appearing for the petitioners, Mr. O.N. Vohra, learned Senior Advocate submitted as under:

(a) The Tehsildar had duly followed the procedure outlined under Sections 22 and 23 DLRA before granting the mutation in respect of the lands in

question in favor of the petitioners here on 7.12.1979. The said order dated 7.12.1979 was passed after Shri Dharam Pal gave in writing on

23.11.1979 that he had no objection to the grant of mutation. The registered sale deed was also examined and an entry was made to that effect in

the remarks column by the Patwari on 18.9.1979. The order dated 7.12.1979 confirming the mutation after following this procedure was not

challenged by Shri Jai Pal and Therefore became final.

(b) The DLRA was complete code in itself and the very wording of Section 85 showed that the claim of adverse possession had to be made

against the bhumidar in question. If it was the case of Shri Jai Pal that he had adverse possession in terms of Section 85 for more than three years

on the date of filing the application under that Section i.e. on 28.8.1980, then Shri Jai Pal would be required to show that his possession was

adverse to those bhumidars whose names were recorded as such three years prior to the date of filing the said application. However, in the instant

case, and application was filed only against the petitioners here and admittedly three years had not elapsed from the time that they were recorded

bhumidars of the lands in question since that happened only on 7.12.1979. On this short ground the application should have been dismissed.

(c) After the remand order passed by the Financial Commissioner on 11.11.1988 recording the fact that the counsel of both sides agreed that the

proceedings u/s 145 or the proceedings for correction of entries in the khasra girdawari would have no bearing on the question of bhumidari rights,

the application u/s 85 could not have been decided on the basis of those decisions.

(d) The recording made by the Revenue Assistant on 4.1.1975 could not be said to be a final order as regards the title or the recording of

bhumidari rights. That observation was made unilaterally upon certain enquiries and not after notice to the respondents whereas the Section 85

proceedings was akin to a trial where evidence could be led by both parties. No credence could have been given to such a stray observation in the

teeth of the khasra girdawari produced by the petitioners which forms part of the record. He referred to the entries made from 20.10.1973

onwards up to the year 1974, when Shri Satya Dev was shown as the tenure holder and thereafter till 1979, when Shri Harnand and Smt.

Ramanandi were shown as the tenure holders. From 1981 onwards, the petitioners were shown as the tenure holders. He says that these entries

coupled with the registered sale deed are sufficient to negate the claim of respondent No. 3 to bhumidari rights.

21. Appearing on behalf of respondent No. 3, Ms. Lata Krishnamurthy, learned Advocate submitted as under:

(a) The scope of the present proceedings under Article 226 was limited to correcting manifest or patent errors. She submitted that findings of fact

even if found to be erroneous, should not be reversed by the Court in proceedings under Article 226 of the Constitution since it was not an

appellate forum. Further, even when there are errors in appreciation of evidence by the judicial authority whose decision is challenged, interference

would be called for only in cases of no evidence. She places reliance on a large number of judgments including the decisions in Ebrahim

Aboobakar and Another Vs. Custodian General of Evacuee Property, , T.C. Basappa Vs. T. Nagappa and Another, , Hari Vishnu Kamath Vs.

Syed Ahmad Ishaque and Others, , Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, , Kaushalya Devi and Others Vs. Bachittar

Singh and Others, , Dr. Chetkar Jha Vs. Dr. Vishwanath Prasad Verma and Others, , Surya Dev Rai Vs. Ram Chander Rai and Others, and

Kishan Chand Bhatia (thr. LRs.) Vs. Union of India (UOI) and Others, .

(b) Relying on the judgment of the Hon"ble Supreme Court in Shanti Kumar Panda Vs. Shakuntala Devi, , she submitted that the proceedings

before the SDM under 145 CrPC may not bind a competent court but such orders would nevertheless, be evidence of possession. In the instant

case, no error was committed by the Additional Collector or the Financial Commissioner in placing reliance upon the order dated 12.8.1985

passed by the SDM finding in favor of respondent No. 3 on the question of possession of land in the proceedings u/s 145 CrPC.

(c) Shri Satya Dev had acknowledged the possession of Shri Jai Pal in proceedings filed by him u/s 84 on 7.3.1963 for ejecting Shri Jai Pal which

was withdrawn on 29.1.1971. He also filed a suit for partition in 1968 u/s 55 of DLRA which was dismissed on 7.4.1980. The objections filed by

Smt. Kalawati on 9.10.1979 showed that she had repudiated the gift deed executed by her in favor of Shri Satya Dev. Further, paras 6, 7 and 10

of her criminal complaint 18.9.1979 indicated that Shri Haranand and Smt. Ramanandi had admitted that they were not in possession of the lands in

question.

(d) As regards the proper parties in the proceedings u/s 85, it is submitted that u/s 3(2) of the DLRA a deeming fiction had been created where

words and expressions used to denote the possessor of any right shall be deemed to include predecessors and successors in right title or interest of

such possessor. Therefore, the non-inclusion of Smt. Kalawati as a co-applicant in the proceedings u/s 85 did not affect the locus of Shri jai Pal to

maintain such an application. Moreover, Shri Jawahar Singh was in actual cultivatory possession on the date of filing of the Section 85 application.

This coupled with the fact that that Smt. Kalawati died in 1981, Shri Haranand in 1984 and Smt. Ramanandi in 1998 meant that the person really

affected would be only Shri Jawahar Singh. Therefore substantial justice had been done by maintaining the application only against Shri Jawahar

Singh and other petitioners.

(e) Reliance has been placed on the decision of the Division Bench of this Court in Nathu v. Hukum Singh AIR 1983 Del 216 and of the Hon"ble

Supreme Court in Hatti Vs. Sunder Singh, to contend that the suit against the petitioners u/s 85 was maintainable. It is asserted that the right u/s 85

became available to the respondent No. 3 when Shri Satya Dev withdrew the suit u/s 84 DLRA on 29.1.1971 and no suit had been brought

against respondent No. 3 in terms of Section 85 DLRA.

(f) Reference is made to the evidence in the proceedings u/s 145 Cr.P.C. which go to show that the possession remained throughout with Shri Jai

Pal. Reference is also made to the report of the SDM made on 4.1.1975 which uses the words ""Tazdeek Hua Hai"" which means that the

possession has been confirmed or verified. It is stated that the decision in *Ambika Prasad Thakur v. Ram Ekbal Rai* AIR 1966 SC 605 permits a

presumption to be withdrawn for even the subsequent period. It is submitted that this has been further affirmed by the Supreme Court later in

Balram Prasad Agrawal Vs. State of Bihar and others, .

(g) It is further submitted that the correction of entries in the khasra girdawari which went in favor of the respondent No. 3 by the order dated

12.8.1985 became final since it was not challenged by the petitioners thereafter.

Scope of proceedings under Articles 226 and 227

22. First, this Court proposes to address the preliminary objection raised by Respondent No. 3 concerning the scope of the present proceedings.

According to respondent No. 3, there is nothing perverse in the orders of the Additional Collector and the Financial Commissioner which calls for

interference of this Court in its writ jurisdiction under Article 226 of the Constitution.

23. In *Ebrahim Aboobkar v. Custodian General of Evacuee Property New Delhi* (supra), it was explained by the Hon"ble Supreme Court that

while one of the grounds for interference would be that the authority which passed the order acted without jurisdiction or in excess of it or in

violation of principles of natural justice, once it was held that the Court had jurisdiction but while exercising it, had made a mistake ""the wronged

party can only take the recourse prescribed by the law for setting matters right in as much as a court has jurisdiction to decide rightly as well as

wrongly."" In *T.C. Bassapa v. T. Nagappa* (supra), the Hon"ble Supreme Court explained that one essential feature of a writ of certiorari is the

control which is exercised over judicial or quasi-judicial Tribunals which was not in appellate capacity but in a supervisory capacity. It was

explained:

In granting a writ of certiorari the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence

upon which the determination based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not

substitute its own views for those of the inferior tribunal.

24. In *Hari Vishnu Kamath v. Ahmad Ishaque* (supra), the Hon"ble Supreme Court developed on this theme further. While stating that for

warranting interference by the High Court there must be a manifest error that vitiates the order under challenge, it was explained that:

The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of

indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.

25. In *Kaushalya Devi and Others Vs. Bachittar Singh and Others*, the Court explained that mere errors of appreciation of evidence was not

enough for the High Court to interfere in the exercise of its supervisory jurisdiction. It ought to be the case of no evidence. The above principles

have been summarised para 38 of the judgment in *Surya Dev Rai Vs. Ram Chander Rai and Others*, . The relevant Sub-paras 3 to 8 read as

under:

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to

have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or

crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules or procedure or acting in violation of principles of natural

justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their

jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does

have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice

has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following

requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter

disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated

argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one

view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the

judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and

circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or

proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings

in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would

obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as,

if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice

or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or

evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

26. As far as the instant case is concerned, there is no dispute that against the impugned order of the Financial Commissioner, made in terms of

DLRA read with Holdings Act, there is no further statutory appeal available to the party aggrieved by such order. It is conceded and rightly so by

the respondent No. 3 that this Court can certainly entertain a writ petition in terms of Articles 226 and 227 of the Constitution against such order of

the Financial Commissioner. The only issue Therefore is about the ambit and scope of the power of this Court to interfere with the impugned order

while exercising its jurisdiction under Article 226 and 227 of the Constitution. The settled law as explained in the above noted decisions of the

Hon"ble Supreme Court restricts the power to those cases where there is a manifest error committed by the Financial Commissioner or the

Additional Collector whose orders are under challenge. As explained by the Hon"ble Supreme Court in Hari Vishnu Kamath (supra) what

constitutes such an error cannot be precisely defined and will have to depend on the facts of every case. The question is whether on the facts of the

present case, the jurisdiction of this Court ought to be exercised. This will necessarily require an examination of the merits of the case to determine

the nature of the error, if any, committed by the Additional Collector and the Financial Commissioner. If such error is a manifest error apparent on

the face of the record, there can be no doubt that this Court will have jurisdiction to correct such error. The preliminary objection is answered

accordingly.

Scope of the proceedings u/s 85 DLRA

27. Sections 84 and 85 of the DLRA read as under:

84 - Ejectment of persons occupying land without title. 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 Sub-section (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 (45 of

1860).

85 - Failure to file suit u/s 84 or to execute decree obtained there under-

If a suit is not brought under Sub-section (1) of 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, 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.

28. The word "bhumidar" has to be understood in the context of Section 5 of the Act which reads as under:

5 - Bhumidhar

Every person belonging to any of the following classes shall be a Bhumidhar and shall have all the rights and be subject to all the liabilities conferred

or imposed upon a Bhumidhar by or under this Act, namely:

(a) a proprietor holding sir or khudkasht land a proprietor's grove holder, an occupancy tenant u/s 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 Bhumidhars on

the commencement of this Act;

(b) every class of tenants other than those referred to in Clause (a) and sub-tenants who are declared Bhumidhars on the commencement of this

Act; or

(c) every person who, after the commencement of this Act, is admitted to land as Bhumidhar or who acquires Bhumidhari rights under any

provisions of this Act.

29. Further Section 2(1)(i)(a), DLRA defines a holding in respect of either the bhumidar or Asami or a tenant or sub tenant or a lessee or in

respect of a property. These are the classes of holders of land who are recognized under the DLRA. In the scheme of DLRA, Therefore, the

concept escheat does not exist. If a land is not held by the bhumidar then it has to be held by the Asami or the Gaon Sabha. It is in the above

context that the expressions used in Sections 84 and 85 have to be understood. This Court has, in Nathu v. Hukum Singh, explained the change

brought about by the DLRA in the following words:

It is, Therefore, clear that as from the date of the declaration of Bhumidari rights, the person in whose favor the Bhumidari rights are granted

becomes a new tenure-holder enjoying all the rights conferred under the Act and subject to all the liabilities imposed by the Act. The interest in

land conferred upon a Bhumidar is not proprietary right which has been abolished but a new right declared under the Act. The actual tillers of the

soil become Bhumidars, whether they were proprietors or occupancy tenants of the class mentioned in Section 5 of the Act.

30. In the said decision, the rights of the bhumidar have been explained as under:

These provisions and various other provisions of the Act show that a Bhumidar does not have an unrestricted interest in the agricultural land which

was held by him before the commencement of the Act as an owner or proprietor. After the commencement of the Act and the declaration of the

Bhumidari rights, he is only given the right to use the agricultural land in a particular manner as specified in the statutory provisions. There are

restrictions laid down on the rights of a Bhumidar to create leases. A Bhumidar cannot transfer possession of the land. Bhumidar is obliged to use

the land for agricultural purposes. A Bhumidar is only a tenure holder having lost the right of ownership in agricultural land after the commencement

of the Act. There is, however, a great security of the tenure under the Act. Bhumidari rights are, Therefore, special rights created on the abolition

of the ownership of the agricultural land and are controlled and regulated by the provisions of the Act. The language of Section 5 of the Act shows

that a Bhumidar has all the rights and is subject to all the liabilities conferred or imposed upon a Bhumidar by or under the Act. The rights to the

tenure holder are granted under the provisions of the Act. The restrictions imposed on the rights of a Bhumidar are also by or under the Act.

31. Further the Hon^{ble} Supreme Court has in Hatti v. Sunder Singh laid down that the DLRA is a complete code in itself and all disputes

concerning holdings have to be decided within the provisions of DLRA itself. The twin objective was to ensure that the land is used for agricultural

purposes and that the right in respect of the land should go to the tiller. In the same judgment, the Hon^{ble} Supreme Court explained that the only

person who could institute a suit u/s 84 DLRA was either the bhumidar or the assami or the Gaon Sabha. Section 85 enlists the consequences of

the failure to file a suit against "such bhumidar". The expression "such" in Section 84 should be understood as denoting that bhumidar against

whom the person filing the suit is claiming adverse possession.

32. Respondent No. 3 has in his application u/s 85 set up a case that on the date of filing of the application i.e. 28.10.1980, he was in exclusive

actual and cultivatory possession for over 10 years. In other words, he claimed that at least 1970 onwards he had been in actual and cultivatory

possession of the land in question. The petitioners, admittedly, have purchased the land in question through sale deed dated 18.9.1979. On that

there is absolutely no dispute. The agreement to sell was executed on 27.8.1979. There is no question of the petitioners claiming possession from

any earlier date. Therefore, as far as the period from 1970 to 1979 is concerned, the claim of Shri Jai Pal as regards adverse possession can only

be vis-a-vis predecessors-in-interest of the petitioners here who are their vendors, Shri Haranand and Smt. Ramanandi. They were bhumidars

from 1974 onwards till 1979. From 1970 to 1974, it was Shri Satya Dev.

33. For proceeding u/s 85 DLRA, three essential features have to exist: (i) the person claiming bhumidari rights should not be a bhumidar in his

own right, but must be claiming adverse possession (ii) the adverse possession should be continuous for a period of three years prior to the filing of

the application; and (iii) it must be adverse for a continuous period of three years against the person who is shown as bhumidar in the records on

the date of filing the application. In the instant case even the respondent do not deny that the recorded bhumidar on the date of filing the application

by Shri Jai Pal were the petitioners. If in fact Shri Jawahar Singh and the petitioners were not the recorded bhumidars, there is no reason for

respondent No. 3 to be seeking any relief against them. But the essential requirement of three years having to elapse prior to the filing of the

application during which the claimant Shri Jai Pal Singh can be said to have been in adverse possession vis-à-vis the petitioner is absent. Since

the latter's possession commenced only on 18.9.1979 and not prior to that date, the essential requirement of Section 85 DLRA is not met. On this

short ground the application filed by Respondent No. 3 u/s 85 ought to have been dismissed as being premature.

34. As regards the adverse possession against Smt. Ramanandi and Shri Haranand, it appears from the orders of the Additional Collector read

with order dated 11.11.1988, that it was agreed that proceedings will continue only against the petitioners here. In other words, if Shri Jai Pal had

any claim of adverse possession vis-à-vis Shri Haranand and Smt. Ramanandi then clearly Shri Jai Pal had given up his right in that regard when

order of remand was passed. Therefore, in order to succeed in the remanded proceedings u/s 85 vis-à-vis the petitioners, Shri Jai Pal would

have to show that he had adverse possession for over three years continuously vis-a-vis the petitioners here on the date of filing the application u/s

85. This is an inescapable position. It is simply not fulfilled in the instant case.

35. There can be no doubt that by not addressing from the fundamental question, both the Additional Collector as well as the Financial

Commissioner have committed a manifest error on the face of the record. No detailed evidence is required to be led because there is no dispute at

all on these facts viz., that the petitioners here entered the picture for the first time only on 18.9.1979 and were claiming possession only from that

date. The dispute of Smt. Kalawati in regard to the possession as against the petitioners here also began on that date.

Effect of the proceedings u/s 145 Cr.P.C. and for correction of entries

36. Much has been made of the proceedings u/s 145 CrPC. Both the Additional Collector and the Financial Commissioner have relied on these

proceedings to show that Shri Jai Pal was in fact found to be in possession even after 4.1.1975. In the first place, it requires to be noticed that

before the Financial Commissioner as recorded in order dated 11.11.1988, it was agreed by both the counsel for parties that on remand, the

question of bhumidari rights would have to be decided independent of proceedings u/s 145 because obviously the order passed there under would

only be subject to the determination of the question of bhumidari rights by the competent court. This much is provided in Section 146 CrPC itself.

The said provision reads as under:

146 - Power to attach subject of dispute and to appoint receiver. (1) If the Magistrate at any time after making the order under Sub-section (1) of

Section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in

Section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the

subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession

thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the

peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any

civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit. Appoint a receiver thereof, who shall

have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any civil Court, the Magistrate-

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the civil Court and

shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just.

37. This position has been further explained by the Hon^{ble} Supreme Court in *Shanti Kumar Panda v. Shakuntala Devi* in the following words:

It is well-settled that a decision by a criminal Court does not bind the Civil Court while a decision by the Civil Court binds the Criminal Court (See

- Sarkar on Evidence, Fifteenth Edition, page 345). A decision given u/s 145 of the Code has relevance and is admissible in evidence to show : (i)

that there was a dispute relating to a particular property; (ii) that the dispute was between the particular parties; (iii) that such dispute led to the

passing of a preliminary order u/s 145 or an attachment u/s 145 on the given date, and (iv) that the Magistrate found one of the parties to be in

possession or fictional possession of the disputed property on the date of the preliminary order. The reasoning recorded by the Magistrate or other

findings arrived at by him have no relevance and are not admissible in evidence. Detour the competent court and the competent court is not bound

by the findings arrived at by the Magistrate even on the question of possession through, as between the parties, the order of the Magistrate would

be evidence of possession. The finding recorded by the Magistrate does not bind the Court. The competent court has jurisdiction and would be

justified in arriving at a finding inconsistent with the one arrived at by the Executive Magistrate even on the question of possession. Sections 145

and 146 only provide for the order of the Executive Magistrate made under any of the two provisions being superseded by and giving way to the

order or decree of a competent court. The effect of the Magistrate's order is that burden is thrown on the unsuccessful party to prove its

possession or entitlement to possession before the competent court.

38. The above legal position has been correctly understood by the parties themselves when they agreed before the Financial Commissioner as

recorded in order 11.11.1988 that the question of bhumidari rights had to be decided independent of proceedings u/s 145 CrPC. In that view of

the matter, arguments by respondent No. 3 with reference to the evidence laid in the proceedings u/s 145 CrPC or the findings rendered therein

are to no avail.

39. To the same effect is the order passed by the Revenue Assistant in the application filed by respondent No. 3 for correction of the khasra

girdawari because that again is not determinative of the question of bhumidari rights. Therefore, the arguments made by respondent No. 3 on the

basis of the orders in these two proceedings must fail.

40. This Court finds that both the Additional Collector and the Financial Commissioner have, in the impugned order, failed to note this essential

aspect recorded in the earlier order dated 11.11.1988 of the Financial Commissioner that the question of grant of bhumidari rights had to be

decided by the Revenue Assistant without reference to the proceedings u/s 145 or the proceedings for correction of the entries in the khasra

girdawari. This again is a manifest error since it is apparent on the face of the record.

The RA's order dated 4.1.1975

41. The next issue that requires to be decided is about the proceedings recorded on 4.1.1975 by the Revenue Assistant on a visit to the village.

The said proceedings read as under:

Today i.e. 4.1.75, while I was on winter tour the villagers of Jhatikara were read out the Khatauni. No person was found dead in Khatauni No.

71-72. Only two litigations already pending in court were found entered in the Girdawari. The original of the Khasra Girdawari was looked into.

The land of khata No. 46/16/2(3-13), 17/1 (3016) is invested in Gaon Sabha and in remarks where Banwari s/o Prabhu, Ram Dhan, Dal Chand,

Om Parkash ss/o Kure all of them entitled to 1/4th share, and the rest of the land is shown in unauthorised possession of Durga etc. While the

name of each of unauthorized occupant along with his parentage should have been mentioned in Khasra Girdawari, which is not the case here. On

enquiry the Patwari informed that such an entry has been entered since the past year in the original girdawari. All these show that the Patwari is not

entering the Girdawari after actually inspecting the fields as he should be doing. Besides, the Bhumidars of land in Khasra Nos. 16/22-23/1, 24,

21/4, 21-2, 50/19/2 are Harnand and Smt. Ramanandi w/o Harnand. And as regards this number Jaipal s/o Khazan is reported to be cultivating

the land. In the cultivation which the entry is "self-cultivation".

42. In the first place, it should be noted that the above report acknowledges the fact that the bhumidari rights are in fact recorded in the names of

Shri Haranand and Smt. Ramanandi. The present proceedings u/s 85 DLRA are precisely for that purpose and not so much on the question of

possession. If mere possession itself was sufficient for determining bhumidari rights, then the whole purpose of Section 85 may be defeated. While

proof of possession may be a strong presumption in favor of the claimant, such claimant cannot succeed in getting bhumidari rights recorded when

the evidence in the form of the record of rights and as in this case a registered sale deed, suggests to the contrary. Nowhere does Section 85 say

that even if there is a registered sale deed that can be ignored while recognising bhumidari rights in favor of the claimant. Unless it is shown that sale

deed itself was obtained by fraud or collusion, would be impermissible for a quasi judicial authority acting u/s 85 to ignore such document.

43. The observations in the order dated 4.1.1975 are at best a prima facie view without any detailed enquiry. In fact, it has even less probative

value than the decision to grant mutation after following the procedure outlined u/s 22 and 23 DLRA read with Rules 144 and 145 DLRR. The

order dated 4.1.1975 can hardly be relied upon to decide conclusively as to the person who should be declared bhumidar. Therefore, it is futile for

the respondent No. 3 to rely on the said order dated 4.1.1975 to claim adverse possession vis-a-vis the petitioners and consequently bhumidari

rights in respect of the land in question.

44. Secondly, the order passed u/s 145 Cr.P.C., although not binding, itself indicates that the order dated 4.1.1975 only indicates the possession

of respondent No. 3 till that date and not further. Thirdly, the khasra girdawari entries which have been produced by the petitioners clearly indicate

that the petitioners' names were entered as bhumidars contemporaneous with the sale deed executed on 18.9.1979. These documents

corroborate the grant of bhumidari rights in favor of the petitioners from 18.9.1979 onwards.

45. The contention of the respondent No. 3 that the erstwhile bhumidars had given up their bhumidari right by withdrawing their suit in 1971 is to

no avail. While it is true that the suit stood withdrawn in 1971 the consequence of right of respondent No. 3 to be recognised as the bhumidar do

not automatically result there from. In any event, after the execution of sale deed on 18.9.1979 in favor of the petitioners here no such presumption

could have been drawn in favor of respondent No. 3. Also, Respondent No. 3 has failed to show how he has the locus to step into the shoes of

Smt. Kalawati to claim bhumidari rights in respect of the land in question. Thus, viewed from any angle the provisions of DLRA do not permit an

automatic inference of grant of bhumidari rights from 1971 onwards in favor of respondent No. 3.

46. For all the above reasons, this Court finds that the Financial Commissioner and Additional Collector have by their orders dated 13.8.1992 and

5.6.1992 respectively committed a manifest error in setting aside the order dated 16.8.1989 of the Revenue Assistant and granting bhumidari rights

in favor of the respondent No. 3. Accordingly, the said two impugned orders dated 5.6.1992 and 13.8.1992 of the Additional Collector and

Financial Commissioner respectively are hereby set aside and the writ petition is allowed with costs of Rs. 10,000/- which will be paid by

respondent No. 3 to the petitioner within four weeks.