courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 22/01/2026

(2001) 02 DEL CK 0147

Delhi High Court

Case No: Civil Writ Petition No''s. 3949 and 4094 of 1992, 1552 of 1993 and 737 and 1905 of 1994 and C.M. No. 1284 of 2001

Ram Sarup Kathuria and Another, etc.		APPELLANT
	Vs	
Administrator of Union Territory of Delhi and Others		RESPONDENT

Date of Decision: Feb. 5, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226
- Delhi Land Reforms Act, 1954 - Section 1(2)
- Delhi Land Revenue Rules, 1962 - Rule 49, 63, 63(4), 63(5)
- Land Acquisition Act, 1894 - Section 6
- Land Revenue Act - Section 16, 84

Hon'ble Judges: Om Prakash Dwivedi, J; A.D. Singh, J

Bench: Division Bench

Advocate: O.N. Vohra, for the Appellant; Avnish Ahlawat, Jayant Bhushan and Vaishalee Mehra, for the Respondent

Judgement

Anil Dev Singh, J.
This order will dispose of five connected writ petitions. Since these petitions raise common questions of law it will not be necessary to give facts of all the writ petitions and it will be sufficient if facts of one of the petitions being Civil Writ Petition No. 4094/92 are given.

2. In Writ Petition No. 4094/92, the petitioners seek the following reliefs--

(a) call for records of the case:

(b) quash the impugned Notification No. F.11/21/83-85/SK/Revenue dated, 3.11.1989 and the offending/amendment by issue of writ of certiorari or any other appropriate

writ order, or direction;

(c) command the respondents and their subordinates, etc. to make entries of cultivatory possession of the petitioners in respect of the land in field Nos. 1726, 1727, 1728, 1729, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756/2, 1757/2, 1875, 1874, 1877 and 1730/2 situated at village Malikpur Kohi alias Rangpuri, Tehsil Mehrauli, New Delhi, after due inspection and inquiry in accordance with rules and practice from time-to-time as prescribed beginning from the date the process was stopped in year 1986-87 and continue to do so in future till warranted by law;

(d) pass such further orders as may be deemed just and expedient in the facts and circumstances of the case;

(e) direct the Patwari Halqa, respondent No. 3, by as interim order to carry out inspection regarding standing crops without loss of time; and

(f) award the costs of the petition.

3. The case of the petitioners is that they are in cultivatory possession of land measuring 81 bids was comprised in field Nos. 1726, 1727, 1728, 1729, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756/2, 1757/2, 1857, 1874, 1877 and 1730/2(1-12) situated village Malikpur Kohi alias Rangpuri, Tehsil Mehrauli, New Delhi.

4. Mr. Vohra, the learned Counsel for the petitioners, submits that the Revenue Authorities are under a legal obligation to record the cultivatory possession of the petitioners over the aforesaid land in the revenue record. Though the petitioners claim to be in possession of the land, they do not dispute that the land has since been acquired by the State. On the other hand, Mr. Bhushan, learned Counsel appearing for the DDA, vehemently denies the claim of the petitioners and asserts that DDA is in possession of the land since the time it was acquired by the State. He contends that Sub-rule (5) of Rule 63 of the Delhi Land Revenue Rules, 1962 (for short ''the Rules'') which starts with a non obstinate clause, makes Rule 63 inapplicable to the land owned by Central Government or local authority and as such the prayer of the petitioners cannot be accepted in law.

5. As per Mr. Vohra, Rule 63 of the Rules, as it stood before 3.11.1989, mandates the concerned Revenue Authority to record the factum of cultivatory possession of a person, who is not even a tenure holder or a sub-tenure holder, over the land in Record of Right. He also points out that by virtue of Notification No. F. 11/21/83-85/SK/Rev., dated 3.11.1989 (for short ''the Notification''), amendments were carried out in some of the rules including Rule 63 of the Rules. At this stage it will be convenient to set out old Rule 63, to the extent it is relevant to the point is issue, and new Sub-rule (5) thereof which was inserted by the aforesaid Notification:

of Rule 63:

63. Name of tenure holder and or sub-tenure holder, columns 4 and 5--(1) Entries in columns 4 and 5 shall be made from the Khatauni of the current year. Patwaris are prohibited from making any changes except on the basis of and order from a Competent Authority and recorded already in the current year''s Khatauni. Such a change shall be recorded in red ink in the relevant column and the relevant order quoted in columns 7, 8, 9 and 10 of the quadrennium Khatauni shall be reproduced in the remarks column of the Khasra.

Explanation: The term tenure holder or sub-tenure holder does not include a purchaser for fruits or flowers, who is to be shown only in the column of remarks with brief details of his lease.

(2) If there is more than one tenure holder or sub-tenure holder included in a Khatauni-Khata, the names of all the tenure holders and sub-tenure holders shall be entered against the first plot of the Khata but against the subsequent plots should be entered only the first name followed by a reference to the first plot of the Khata.

(3) If a person other than the one recorded in column 4 and 5 is found to be in actual occupation of the plot at the time of the Partal, his name shall be recorded in red ink in the remarks column as baqabza so and so.

Note: All entries in such cases are intended to show the fact of possession; these shall under no circumstances be held as recognition of any illegal transmission.

(4) If a tenure holder or sub-tenure holder recorded in column 4 and 5, ceases (cases) to be in possession, for any reason and no one else is found to be in possession, the entry in the remarks column shall show the reason for the plot remaining uncultivated by entering therein, the fact of decease of the tenure holder or sub-tenure holder or surrender nor abandonment or his becoming untraceable, etc., as the case may be. Even in these cases the entry in column 18 of the Khasra shall show the class or sub-class of uncultivated land".

New Sub-Rule (5):

"(5) Notwithstanding any thing contained in any law for the time being in force, nothing contained in this rule shall apply to any land--

(a) included in any estate owned by the Central Government or local authority;

(b) held and occupied for public purpose or a work of public utility and declared as such under Clause (c) of Sub-section (2) of Section 1 of the Delhi Land Reforms Act, 1954 (Act No. 8 of 1954);

(c) situated in village abadi or extended abadi;

(d) notified for acquisition u/s 6 of the Land Acquisition Act, 1894 or notified as such under any other law for the time being in force;

(e) vested in a Gaon Sabha;

(f) declared as "Wakf" property under the Wakf Act, 1954".

6. Mr. Vohra submits that Sub-rule (5) which has been inserted after Sub-rule (4) of Rule 63 of the Rules is ultra virus the powers of the rule making authority, inasmuch as Sub-rule (5) has been given overriding effect over the statute. There is force in the contention of the learned Counsel for the petitioners.

7. In Balbir Singh Vs. A.D.M. (REVENUE) and Others, , a Division Bench of this Court struck down the Notification on the ground that the rule making authority acted beyond its power. The judgment of the Division Bench was carried in appeal to the Supreme court. the Supreme Court in that appeal being Civil Appeal No. 6820 of 1995, Addl. District Magistrate (Rev.) Delhi Admn. Vs. Shri Siri Ram, , upheld the decision of the Division Bench of this Court. The Supreme Court while upholding the decision held as follows:

"8. Old Rule 63 deals with instructions of filling up of columns 4 and 5 from Khatauni in Form P4 and against columns 4 and 5 names of tenure holder and sub-tenure holder as prescribed in the Khatauni are required to be recorded. By inserting new Sub-rule (5) to Rule 63, henceforth, Rule 63 shall not apply to the lands classified in Classes (a) to (f) of the said sub-rule.

9. The Land Revenue Act did not empower the rule making authority either to classify land or exclude any area from preparation of record of-rights and Annual Register and Register and Therefore if the amendments are upheld, the result would be that a person would be deprived of his valuable rights of possession in the excluded area as his name would not be recorded in the record-of-rights.

10. u/s 16 of the Land Revenue Act it is the duty of the Deputy Commissioner to maintain a map and field book of each village in accordance with rules made u/s 84 and to make necessary changes.

11. Under old Rule 49 the Patwari is required to make field-to-field inspection three times in a year, the object being to maintain the map and the field book properly. Rule 51 enjoins a duty upon the Patwari to compare the fields one-by-one with the map and in every inspection shall note any change which might have occurred on the boundaries, etc. By amending this rule the rule making authority has excluded certain classes of land which is defined as "Extended Abadi" from the operation of preparation of map and the field book. The Act does not authorise the rule making authority to exclude any area from the purview of Section 16 of the Land Revenue Act. Thus the rule making authority acted beyond its power".

8. In this view of the matter the concerned Revenue Authority under old Rule 63 of the Rules is bound to record the cultivatory possession of a person even in respect of a Government land. Having regard to the aforesaid decisions, we consider it appropriate to direct the concerned Revenue Authority to hold an enquiry with regard to the questions whether the petitioners are in cultivatory possession of the

aforesaid land or whether the possession over the same is that of the DDA/Land Acquisition Authorities. We order accordingly. The Revenue Authority after making an enquiry will make an entry in the record-of-rights in accordance with the result of the enquiry and direction of the Division Bench in Balbir Singh''s case (supra) provided it finds any of the parties, namely, the petitioners, the DDA or Collector, Land Acquisition, to be in cultivatory possession of the land. The Revenue Authority before making entries will accord hearing to the parties.

9. The Writ Petition No. 4094/92 and the aforesaid connected writ petitions as well as the C.Ms. are disposed of in the above terms.

10. W.Ps. and C.Ms. disposed of.