

(2012) 05 DEL CK 0692

Delhi High Court

Case No: Writ Petition (C) 7511 of 2005

Randhir Singh

APPELLANT

Vs

Financial Commissioner and
Another

RESPONDENT

Date of Decision: May 21, 2012

Acts Referred:

- Delhi Land Reforms Act, 1954 - Section 185, 81

Citation: (2012) 194 DLT 178

Hon'ble Judges: Sunil Gaur, J

Bench: Single Bench

Advocate: N.S. Dalal, for the Appellant; V.K. Tandon, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Sunil Gaur

1. A conditional order of ejectment (Annexure P-5) of the petitioner from two bighas of land in Khasra No.103, situated in the revenue estate of Village Madangarhi, Delhi, (hereinafter referred to as subject land) passed on 3rd September, 2002, in proceedings u/s 81 of the Delhi Land Reforms Act, 1954, was unsuccessfully challenged in appeal, which stood dismissed vide order of 4th March, 2004, (Annexure P-7) and the revision against the aforesaid order also stands dismissed by the Financial Commissioner, Delhi, vide impugned order of 2nd December, 2004 (Annexure P-8). The challenge to the impugned order (Annexure P-8) is on the ground that the earlier proceedings u/s 81 of the Delhi Land Reforms Act, 1954, initiated against the petitioner were dropped vide order of 4th May, 2000 (Annexure P-2) and in view of the bar of WP(C) No.7511/2005 Page 2 limitation of three years as contained in schedule-I to Section 185 of the Delhi Land Reforms Act, 1954, initiation of fresh proceedings is unwarranted and the fresh proceedings initiated u/s 81 of the Delhi Land Reforms Act, 1954, is bad in law and the orders passed in pursuance

thereto are unsustainable in law and thus, deserves to be set aside.

2. Respondent's counsel while supporting the impugned order had pointed out that the revenue record i.e. Khasra Girdawari of the year 2000-01, pertaining to the subject land reveals that there was no construction and so in view of the report of 23rd March, 2001 of the concerned Patwari showing the construction upon the subject land warranted initiation of fresh proceedings u/s 81 of the Delhi Land Reforms Act, 1954, against the petitioner and so the bar of limitation would not arise and since the factum of petitioner putting the subject land to non-agricultural use remains undisputed, therefore, there is no error apparent on the face of the impugned order, requiring intervention of this Court in the writ proceedings.

3. Having heard learned counsel for the parties, and on perusal of the impugned order and the material on record, I find no hesitation in sustaining the impugned order, as there is no impediment to ignore the patently erroneous order (Annexure P-2) dropping the proceedings initiated against the petitioner in pursuance to the patwari's report of 4th February, 2000 (Annexure P-1), as the aforesaid order (Annexure P-2) has been passed while blatantly ignoring patwari's report (Annexure P-1), wherein there is mention of existence of houses, tin sheds etc. It is nobody's case that construction of any kind of house upon agricultural land is permissible. The only difference between the patwari's report (Annexure P-1) relied upon by petitioner's counsel and the subsequent report (Annexure P-3) is that the report (Annexure P-1), which was subject matter of the earlier proceedings u/s 81 of the Delhi Land Reforms Act, 1954, indicated limited violation as upon one bigha of the subject land there was plantation of vegetable and trees of fruits, whereas the subsequent report (Annexure P-3) discloses utter violation of Section 81 of the Delhi Land Reforms Act, 1954, as there was no cultivation at all in the subject land.

4. Upon consideration of this matter in its correct perspective, I am unable to accept the contention of petitioner's counsel of the subsequent proceedings u/s 81 of the Delhi Land Reforms Act, 1954, culminating into passing of the impugned order being time barred, as non est and void orders like (Annexure P-2), can neither operate as res judicata nor can render the subsequent proceedings barred by time.

5. Such a view is being taken in view of the law laid down by a Division Bench of this Court in Babu Ram and Ors. Vs. Union of India & Ors. 125 (2005) DLT 259, which is as under:-

It is, therefore, evident that expressions "void" and "voidable" have more than one facet. Transactions and decrees which are wholly without jurisdiction are void ab initio and no declaration may be necessary for avoiding the same. Law does not take any notice of such acts, transactions or decrees which can be disregarded in collateral proceedings or otherwise. There are, however, transactions, which will remain good unless declared to be otherwise. For instance, transactions against a minor without being represented by a next friend may be voidable at the instance of

the minor in appropriate proceedings in which case it becomes void from the beginning. The third category may be the cases where an act or transaction is good unless declared to be void. Such a transaction is voidable because the apparent state of affairs is the real state of affairs and a party who alleges otherwise, shall have to prove it. For instance, if the document is forged and fabricated, a declaration to that effect is necessary for otherwise the document is legally effective.

6. Applying the salutary principles of law governing void and voidable orders as enunciated above, the spirit of the law as embodied in Section 81 of the Delhi Land Reforms Act, 1954, cannot be defeated by permitting the petitioner's counsel to blatantly urge that he had been violating the law since the year 2000, and so the limitation to initiate proceedings u/s 81 of the Delhi Land Reforms Act, 1954, have to be reckoned from the said date. Such a perverse view cannot be taken, being impermissible on the face of it. In the light of the view taken as aforesaid, eviction order (Annexure P-5) is sustained and this petition is dismissed with costs of Rs.10,000/- to be deposited within a week with the Secretary of Delhi High Court Legal Services Committee. This Court is constrained to impose costs in this matter in view of the conduct of the petitioner of violating the law with impunity while impishly seeking shelter under the law of limitation.