

Shri Ram Phal and anr. Vs. Shri B.S. Bhalla and ors.

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Court : Delhi

Decided On : Mar-09-2004

Reported in : 2004CriLJ4274; 112(2004)DLT193; 2004(73)DRJ528

Judge : Vikramajit Sen, J.

Acts : Delhi Land Revenue Act - Sections 41 and 76 to 87; Delhi Land Revenue Rules, 1962 - Rules 49, 63 and 65A; [Contempt of Courts Act, 1971](#) - Sections 20; Delhi Land Revenue (Amendment) Rules, 1989; [Constitution of India](#) - Article 215; ;Code of Criminal Procedure (CrPC) - Sections 340

Appeal No. : CCP 381/2000

Appellant : Shri Ram Phal and anr.

Respondent : Shri B.S. Bhalla and ors.

Advocate for Def. : V.K. Shali, Adv.

Advocate for Pet/Ap. : R.P. Bansal, Sr. Adv. and; P.D. Sharma, Adv

Judgement :

Vikramajit Sen, J.

1. In this petition it has been alleged that the Respondents have willfully disobeyed the Judgment dated 17.1.1995 passed by the Division Bench of this Court

comprising Hon'ble Mr. Justice D.P. Wadhwa and Hon'ble Mr. Justice Devinder Gupta which held, inter alia, as follows- " Extended abadi is covered by the definition of the land. This definition of land does not exempt the classes of the land now incorporated in sub rule (5) of the Amended Rule 63 by virtue of the impugned amendments. In case there is no provision in the Act excluding the six categories of land from the operation of the Act, by merely issuing a notification giving is to be a colour of amendments in the rules under the rule making power of Section 85, which nowhere authorises the rule making authority to exempt any of the land from the operation of the Act, the amendments aforementioned deserves to be held to be bad in law and beyond the authority of the rule making power. For the self same reason, the amendment of form P.5 also cannot be sustained and as to be quashed and set aside, which we accordingly do by allowing these petitions. We direct the respondents to maintain the record of rights, including the Annual Register, in accordance with the provisions of the Delhi Land Revenue Act and the Delhi Land Revenue Rules, 1962, without taking into consideration the amendments carried out to Rules 49, 63 and form P.5 by virtue of the Delhi Land Revenue (Sixth Amendment) Rules, 1989, as notified on 30th November, 1989. The writ petition stands disposed of in the above terms. " For a perusal of the complete Judgment reference is directed to Balbir Singh vs . ADM(Revenue) and Others, : 57(1995)DLT547 DB.

2. The Respondents had filed an Appeal before the Hon'ble Supreme Court which was disposed of by Judgment dated May 5, 2000 in which the aforementioned Judgment of the Division Bench was upheld and it was observed, inter alia, as follows:

"According to Section 4 of the Land Reforms Act, there is one class of tenure holder, that is to say, BHUMIDAR, and one class of sub-tenure holder, that is . to say, ASAMI, and their rights and liabilities are mentioned in Section 5 of the said Act. Under Section 65A, a tenure holder or a sub-tenure holder may be evicted by the Deputy Commissioner if land is not used for two consecutive years for a purpose connected with agriculture, horticulture etc. Section 81 of the Land Reforms Act provides for ejectment of a Bhumidar or Asami for use of a land in contravention of the provisions of the Land Reforms Act. According to Section 41

of the Land Revenue Act, all entries in the record of rights prepared under the Act shall be presumed to be true unless the contrary is proved. As a result of the amendments made in Rule 49 and Rule 63 the rights of the tenure holder or a sub-tenure holder occupying land in "Extended Abadi" or six categories of lands mentioned in the new sub-rule (5) of Rule 63 would be adversely affected as their possession of the land in those areas would not be reflected in the record-of-right; and Annual Register. This is contrary to the provisions of both the Act. The other amendments made in Rules 65A, 67 and Form P.5 are liable to be quashed on the self same ground. It is well recognised principle of interpretation of a statute that conferment of rule making power by an Act does not enable the rule making authority to make rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. From the above discussion, we have no hesitation to hold that by amending the Rules and Form P.5, the rule making authority have exceeded the power conferred on it by the Land Reforms Act. We, therefore, hold that the High Court has rightly quashed and set aside the impugned rules and therefore, the appeals have no merit. In the result, the appeals are dismissed. Parties to bear their own costs." .

3. It would be advantageous to reproduce verbatim the Orders of yet another Division Bench of this Court:

"This letters patent appeal is directed against the order of the learned single Judge dated 13th July, 2001. There is no dispute that the land vests in Gaon Sabha. The appellant claims that the appellant has been in possession of the land since 1981 and since the revenue authorities were not recording the possession of the land in the revenue record the appellant was forced to file a writ petition, being writ petition no. 3699/91. It is the case of the appellant that in that writ petition the appellant had called in question the amendment carried out in the Rules. That writ petition came to be decided by the Division Bench of this Court. The Division Bench held sub rule (5) of Rule 63 to be ultra vires. The matter was carried in appeal before the Supreme Court. The Supreme Court dismissed the appeal. The net result of the litigation was that the revenue authorities were bound to record the possession of the persons holding the land. The revenue authority by interpreting the judgment of this court in writ petition no. 3699/91 was of the

opinion that it was bound to record the possession of the appellant without going into the fact whether actually the appellant was in possession of the land or not. It misunderstood the decision of this Court and recorded the possession of the appellant in Khasra Girdhawari of the year 1997-98. The entries, however, were reversed by the revenue authorities subsequently, as according to them it was found that the appellant was not in possession of the land. The appellant, being aggrieved by the action of the revenue authorities then filed another writ petition on the ground that the possession of the appellant ought to have been recorded in the revenue record. The learned single Judge by a detailed order rejected the writ petition. We have gone through the appeal as also the writ petition. We agree with the learned Single Judge that the writ petition raises disputed questions of fact inasmuch as while the appellant claims that the appellant was in possession of the land, the revenue authorities claim that the land was allotted to the Horticulture Department in August 1993. This being a disputed question of fact cannot be resolved in a writ petition. Learned counsel appearing for the appellant points out that in *Ram Swarup Kathuria vs. Administrator of Union Territory of Delhi and Others* 90 (2001) DLT 773, this Court had passed the following order:- 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 question 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. On the basis of these observations, learned senior counsel for the appellant says that the appellant should be granted the same relief as was granted in the aforesaid case. He says that in case similar direction as was given in *Ram Swarup Kaqthuria case* (supra) is issued, the appellant shall be satisfied. Having regard to the submission

of learned counsel for the appellant and keeping in view the decision of Ram Swarup Kathuria and Another (supra), we direct the concerned revenue authority to hold an enquiry with regard to the issue whether the appellant is in cultivatory possession of the land in question. In case the appellant is found to be in possession of the land, the revenue authority shall act in accordance with law. Before passing any order the concerned revenue authority shall hear the appellant, Gaon Sabha and the Horticulture Department. With the aforesaid directions, the appeal is disposed of."

4. In opposition to the contempt petition it has been submitted on behalf of Respondent No.2 that the Respondents have not disobeyed the Orders dated 17.1.1995 of the Division Bench of this Court. It has been pleaded inter alia that there is "no direction to the answering respondent to make any entry in the revenue record regarding cultivatory possession of the Petitioner from 1983 till 2000. Moreover so far as the question of making an entry in the revenue record is concerned, it is done by the Patwari on partial that is on site in question and further such entries cannot be made for last 17 years in respect of waste lands which belong to the Gram Sabha for common use of the villagers". Secondly, it has been contended that Section 20 of the [Contempt of Courts Act, 1971](#) mandates that a grievance pertaining to the disobedience of any Order must be filed within one year of its passing. It has further been averred that the "land under reference has been categorised as banjar Khadim/waste and over a long period and no person other than Gram Sabha has been found to be in cultivatory possession at the time of each partial (periodic inspection tours) i.e. from 1985-86 till 1999-2000 by the halka patwari. As the land under reference we e not under cultivation for last 15 years no crops were recorded by the halka patwari during the inspections in form P-4". These pleadings are contained in the Respondent's Reply dated 4th October, 2000, filed in this Court one week later. Significantly, the records pertaining to the years 1983-84 and 1984-85 have not been produced by the Respondents, for the reason that they have been destroyed in September, 2002, that is, after the filing of this Petition and the Reply thereto. It is indeed astonishing that such an action should have been taken by the Administration despite knowing that these documents were crucial and critical for the determination of the disputes. A facile reliance on the Rules permitting the

destruction of the records cannot deter me from drawing an adverse inference against the Respondents.

5. I shall first consider the preliminary objection pertaining to the non-maintainability of the present petition by virtue of the operation of Section 20 of the [Contempt of Courts Act, 1971](#). The Petitioner has pleaded that in view of the pendency of the Special Leave Petition(SLP) before the Hon'ble Supreme Court he did not pursue the matter, and only upon its dismissal vide Judgment dated May 5, 2000, was the present petition filed. I find no merit in the contention of the learned counsel for the Respondent that the petition is barred by the principles of limitation. The Petitioner has demonstrated remarkable responsibility in forbearing to file a contempt petition during the pendency of the SLP. In my view a wholly contradictory argument has been raised on behalf of the Respondents to the effect that a stay of the operation of the Judgment of the Division Bench had not been ordered by the Hon'ble Supreme Court and, thereforee, this contempt petition ought to have been filed within one year, i.e. on or before 16.1.1996. This stance and argument leaves this Court with no alternative but to find the Respondents guilty of willful disobedience of the Orders of the Division Bench should it be concluded that the Petition does not warrant dismissal on the grounds of prescription. Clearly, the Respondents were aware that they should have complied with the Judgment of the Division Bench as no stay against its operation had been passed by the Apex Court. As has been said earlier, the Petitioner has demonstrated a share and store of maturity which is not often encountered in Court proceedings. The argument of Mr. Shali also places a cloud on the submission that the Khasra Girdawari i.e. Form P-4 had been duly drawn up from the year 1985-86 onwards i.e. Annexures R-1 to R-15. This is for the reason that on the merits of the case it has been contended that the Orders dated 17.1.1995 have been duly complied with. The objection of limitation is, thereforee, wholly otiose and unnecessary. Furthermore, the Respondents are statutorily obligated to "maintain the record of rights including the Annual Register, in accordance with the provisions of Delhi Land Revenue Act and the Delhi Land Revenue Rules year by year". Each and every non-compliance, thereforee, would attract and sustain the charge or complaint of holding the Judgment dated 17.1.1995 of the Division Bench of this Court in contempt. thereforee, even if a hyper-technical approach

were to be adopted, the non-observance of the said Judgment in the year 1999 or 2000 would bring the petition within limitation. Furthermore, in raising this technical objection, Article 215 of the [Constitution of India](#) has been conveniently but fatally overlooked. There is unison of opinion in all the Courts that the powers contained in Article 215 are unbridled and cannot be circumscribed by the Legislature, whether in the realm of limitation or in accepting an apology, or in placing a ceiling on the amount of fine imposable by the Court. Hence it is held that the Contempt Petition is entertain able, and since it is admitted and submitted by counsel for the Respondents that the Judgment of the Division Bench had not been stayed, the Respondents are punishable for willful contempt of court. Even if the Respondents were not bound to prepare Khasra Girdawaris for 1982-1983 onwards, this obligation was crystal clear for the years following the passing of the Judgment by the Division Bench of this Court. It is my opinion that the petition is within the prescribed period of limitation. In the present case a large number of writ petitions have been filed in this Court because the Respondents abundantly have, according to the Petitioner, failed to record the rights in accordance with the direction of the Division Bench of this Court. The preliminary objection is, therefore, rejected with costs of Rs. 5000/-.

6. It is trite to state that for a person to be held punishable under the Contempt of Courts Act the Order of which disobedience is alleged should be explicit and unambiguous. If two opinions are possible, and the one preferred or adhered to and complied with by the Respondents is a plausible one, the Court should eschew the exercise of its powers of committing for its contempt. It is also well established that the powers to commit for Contempt cannot be invoked as a substitute for execution proceedings. In *J.S. Parihar Versus Ganpat Duggar and Others*, : AIR 1997 SC113 , it had been ordered that a seniority list be prepared which was so done. However, a contempt petition was preferred on the ground that it was not correctly prepared and therefore violated the concerned Order. The Hon'ble Supreme Court made the following pronouncement:

"It is seen that once there is any order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be

wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. That cannot be considered to be the willful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge can not be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the division Bench corrected the mistake committed by the learned single Judge. therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench. The appeals are accordingly dismissed. It may be open to the aggrieved party to assail the correctness of the seniority list prepared by the State Government, if it is not in conformity with the directions issued by the High Court, if they are so advised, in an appropriate forum. No costs".

Similar views have been reiterated in *Ram Kishan Versus Raj Kumar* 2003 (6) Scale 682 as is evident from a perusal of the following Order by which the Petition came to be dismissed.

"1. Heard the learned counsel for the parties.

2. Mr. Mukul Rohtagi, the learned Additional Solicitor General appearing on behalf of the respondent-State states that the respondents have complied with the directions issued by this Court. Accordingly, they have prepared the seniority list and intimated to the petitioner his position in the seniority and have also prepared the Register as directed by this Court. Learned counsel for the petitioner, however, disputes the said submission.

3. Considering the dispute, in our view, the contempt proceedings is not the proper remedy. If respondents have not allowed the directions, it would be open to the petitioner to file fresh petition for the remaining grievance.

Hence, this petition for initiation contempt proceedings is dismissed. Contempt Notice discharged."

In *Jharieswar Prasad Paul and Another Versus Tarak Nath Ganguly and Others*, : 2002 CriLJ2935 the Apex Court has opined as extracted below:

"The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The [Contempt of Courts Act, 1971](#) has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the appellate jurisdiction for determination of the disputes between the parties., The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the

judgment or order. If this limitation is borne in mind then criticisms which are sometimes leveled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts". . .

7. Where an ambiguity occurs, it has been seen, a party should not be punished. The corollary is that every Order/Judgment can be read and interpreted by a party in several ways, and if it is implemented as the latter genuinely and honestly understands it, its violation would not occur. In this context the following passage of the decision in *Diamond Plastic Industries Versus Government of Andhra Pradesh and Ors.* : JT2002(2)SC640 is relevant:-

"Ms. Shyamla Pappu, learned senior counsel then referred to a report of the general manager, District Industries Centre, Sangareddy, Medak district dated 19th March, 2001 wherein the said officer appears to have taken the view that the claim of M/s. Diamond Plastic Industries was on the basis of the orders made by the BIFR, High Court and the Supreme Court. But the reading of the officer of the order of Supreme Court probably is not correct. At any rate such reading of the concerned officer does not confer a right of the claimant nor would it amount to a violation of the Court's direction so as to take action against the State of Andhra Pradesh and/or officers of State of Andhra Pradesh for non-payment of the amount in question. Unless and until the Court is satisfied that there has been a deliberate violation of any positive direction, the question of initiating any contempt proceedings or taking any action against any party under the provisions of Contempt of Courts Act does not arise. Having regard to the facts including the order passed by this Court, already referred to, we do not see any justification for initiating or taking any action against the respondents under the provisions of Contempt of Courts Act. This contempt petition is, accordingly, dismissed. . Dismissal of the contempt petition, however, will not debar the applicant to agitate

the claim before an appropriate forum, if the applicant is . . . really entitled to any sum and the forum on being approached, will dispose of the matter in accordance with law."

8. The Delhi Land Reforms Act, 1954, was enacted "to provide for modification of zamindar system so as to create an uniform body of peasant proprietors without intermediaries". This statute does not have the objective of confiscating the land-holding of any person actually cultivating it, regardless of whether such land is indubitably barren or waste land as is palpably clear from the highlighted and underlined provision of Section 7. Unless there is a manifestly evident power and intent to acquire the land with or without the payment of compensation, Article 300A of the Constitution would immediately get attracted and the provision would be liable to be struck down as ultra vires. In the present case, it is nobody's stance that sub-section (2) as been adhered to and the Petitioner has been divested from the land by its acquisition, and that compensation has been paid. 7. Rights of proprietors in waste lands, pasture lands or lands of common utility, etc., to vest in Gaon Sabha and compensation to be paid for them.-

(1) All rights of an individual proprietor or proprietors pertaining to waste lands, grazing or collection of forest produce from forest or fish from fisheries lands of common utility such as customary common pasture lands, cremation or burial grounds, abadi sites, pathways, public wells, tanks and water channels, or Khali-hans, whether covered by an existing contract between such proprietor or proprietors and any other person or not, shall with effect from the commencement of this Act be terminated in accordance with the provision of sub-section (2) and the said contracts, if any, shall become void with effect from such commencement: Provided that where such land was as a result of consolidation of holdings made available for use for any purpose other than those referred to in this sub-section, land kept aside in exchange thereof, as a result of such consolidation, shall for the purposes of this Act be deemed to be land originally meant for purposes referred to in this sub-section. Explanationn.-For the purposes of this sub-section- (i) "waste land" shall include cultivable and uncultivable waste area of the village including any land in the bed of a river occupied or held by an Asami referred to in section 6(a)(iii) of the Act except the uncultivated areas-

(a) included in the holdings of such proprietor or proprietors, or

(b) used for purposes other than those mentioned in clause (13) of section 3, at any time before the 28th day of October, 1956, or

(c) acquired by a bona fide purchaser for value at any time before the 28th day of October, 1956, for purpose other than those mentioned in clause (13) of section 3.

(ii) "lands of common utility" shall include such lands as are recorded as such at the last settlement or have been or would have been customarily recorded as such on 1st July, 1950.

(2) On the commencement of this Act, the Deputy Commissioner shall pass an order in respect of the proprietor or proprietors of each village either singly or collectively divesting the individual proprietor or proprietors of the rights mentioned in sub-section (1) and vesting those rights in the Gaon Sabha, or in any person or authority appointed by the Chief Commissioner under section 161 with effect from the commencement of this Act and stating that a compensation equal in value to four times the amount of annual land revenue assessed at the last settlement for the cultivable and uncultivable waste area of the village shall be paid by the government to the proprietor or proprietors concerned. If no such assessment of land revenue was made at the last settlement the rate of land revenue applied at the last settlement for similar areas in any other village in the same assessment circle shall be taken to be the rate of land revenue applicable to such areas or failing this the rate of land revenue applicable to such areas shall be computed at 75 per cent. of the land revenue assessed on the lowest class of soil in the village.

(3) The amount of compensation shall be calculated separately for each village for the respective proprietor or proprietors in accordance with rules made under this Act and payments thereof shall be made in such number of annual Installments, not exceeding four, as the Chief Commissioner may determine, the first of which shall be paid- (a) in any case where such calculation has been made before the date on which the Delhi Land Reforms (Amendment) Act, 1959, receives the assent of the President, on the first day of the fasli year next following such date; and (b) in any other case, on the first day of the fasli year next following the date of such calculation.

(4) Where the amount of compensation is not paid by the due date specified in sub-section (3), such amount shall be paid with interest thereon at the rate of 2 1/2 per cent. per annum from the said date until payment.

9. The word 'banjar' has not been defined in the Act or Rules. In ordinary parlance it means barren or unproductive and would thus be synonymous or cognate to 'waste land'. A holistic reading of Section 7 cannot lead to the conclusion that even lands which are owned by any person shall pass to the control of the State and rights to its user could be immediately suspended. The Act does not provide for the vesting of barren land in the State even if it is within the ownership or holding of an individual. What it establishes is that all uncultivated lands not within the ownership of any person, shall vest with the Gaon Sabha and thus cannot be encroached upon.

10. The other provisions which have been relied upon are reproduced for facility of reference- "Section 20 of the Delhi Land Revenue Act. 20 Record of rights-(1) There shall be a record-of-rights for each village subject to such exceptions as may be prescribed. (2) The record-of-rights shall consist of a register of all persons cultivating or otherwise occupying land specifying the particulars required by Section 40 Section 63 of the Delhi Land Revenue Rules, 1962. 63 Name of the 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. Patwaries are prohibited from making any changes except on the basis of an order from a competent authority and recorded already in the current years 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. Explanationn-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 name 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 columns 4 and 5 of Form P-4 is found to be in actual cultivatory occupation of any field at the time of the partial his name and the crop shall be shown in Form P-5. Provided that no entry in Form P-5 shall be made if-

(a) The field was not sown; or

(b) The crop failed and the field was not re-sown in the same season
Explanationn-For removal doubts it is hereby clarified that entries made in Form P-5 as aforesaid shall not be construed to be conferring any title or right on recognition of the cultivatory possession or evidence for such possession.

(4) If a tenure holder or sub-tenure holder recorded in column 4 or 5, 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 or 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."

11. It should be borne in mind that sub-section (5) had been struck down by the Judgment dated 17-1-1995 in Balbir Singh's case (supra). Since it is evident that the Respondent's stand is predicated on this provision, it is necessary to reproduce it: (5) Notwithstanding anything 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 Govt. or local authority; (b) held and occupied for a public purpose or a work of public utility and declared as such under clause (c) sub-section (2) of Section 1 of the Delhi Land Reforms Act, 1954. (c) situated in village abadi or extended abadi; (d) notified for acquisition under section 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. . .

12. In my opinion sub section (3) of Rule 63 of the Delhi Land Revenue Rules, 1962 has not been adhered to and the letter and spirit of the Judgment of the Division Bench has not been honoured. The Khasra Girdawaris for 1977-78 to 1980-81 record the Gaon Sabha as the tenure holder with a 'red-ink' entry in the name of the Petitioner. The Khasra Girdawaris for 1981-82 mentions the Petitioner as the tenure holder; probably because of his three years prior possession. It appears that the Petitioner had initiated proceedings in which, by the Orders of the Revenue Assistant dated 3-1-1981 the Petitioner had been declared the bhoomidar under Section 85 of the Delhi Land Reforms Act, 1954. However, this Pronouncement was set aside by the First Appellate Court of the Additional Collector, Delhi in terms of the Order dated 6-5-1983, which was affirmed by the Second Appellate Court of the Financial Commissioner, Delhi by his Order dated 22-9-1983. The reasoning of the Appellate Courts was that the limitation of three years would expire on 30th June, 1981, and therefore the three year period had not expired. These documents have been placed on this Court's record as Annexures R-16 and R-17 of the affidavit of Shri Arun Mishra, who was the SDM-Revenue Assistant at that time, that is November, 2000 . It should be underscored that all the necessary documents were available to the officer for his perusal. This leads to the inescapable and incontrovertible conclusion that at least between 1977 and 1982 the Petitioner was in possession (even if unauthorised or illegal) of the lands in question and that these lands were not banjar or barren or waste, since they had been cultivated upon. Theoretically, the Gaon Sabha could have forcibly entered upon the possession of the land in the next year, but in that event a 'red-ink' entry in the Khasra Girdawari would have been essential, followed by the preparation of Form V and its attendant proceedings. Such documents have not seen the light of day. Alternatively, the Respondent could have initiated proceedings under Section 86A of the Delhi Land Reforms Act for ejectment of the Respondent as appears to have been done in August 2000. .

13. It is not a mere coincidence that the recording of the Khasra Girdawari was discontinued or is not available at all for the year 1983. I must immediately record the emphasis placed by Mr. Shali on the Explanation to Rule 63(3) as well as to the reliance placed by him on sub-rule (5) (e) of Rule 63 of the Rules which was to the effect that notwithstanding anything contained in any law for the time being in

force, nothing contained in Rule 63 shall apply to any land vested in a Gaon Sabha. As has already been seen sub-rule (5) of Rule 63, which had been inserted by Delhi Land Revenue (First Amendment) Rules, 1989, has been struck down as ultra vires the main statute. The argument raised on behalf of Respondents, apart from being wholly erroneous discloses the mindset of the Respondents. It indicates the Respondent's impression and understanding that the lands which in their incorrect view had vested in the Gaon Sabha, in respect of which entries had been made in Form P-5 made it unnecessary to record cultivatory possession of any other person in respect of such lands. It is contended that this is so because even if entries of possession adverse to that of the Gaon Sabha had been recorded and Form V had been issued, such entries could not be construed as conferring any title or rights of recognition of the cultivatory possession or evidence of such possession. In other words, Gaon Sabha Land would remain so for time immemorial, regardless of trespass or permissive cultivation. It reduces the fascicules comprising Sections 76 to 87 of the Act to sterile and superfluous provision. Any interpretation leading and resulting in such a situation must be abjured. Therefore, even a trespasser's cultivation of Gaon Sabha land must be recorded in the Khasra Girdawari. It was the Respondent's failure to adhere to this practice which was frowned upon and found to be illegal by the Judgment dated 17.1.1995 of the Division Bench, which was confirmed by the Judgment of the Hon'ble Supreme Court on 5th May, 2000. This is the gravamen of this Judgment; yet the very arguments that had been rejected are being regurgitated. The ejectment of an unauthorised or illegal person can only be effected by resort to these Sections and not by the device of refusing to record the name of the person in actual possession. It is the common case that a petition under Section 86A of the Delhi Land Reforms Act for ejectment of the Petitioner has been filed in or around August 2000 in the Court of the Sub Divisional Magistrate/Revenue Assistant. It also lends considerable credence to the submission of the Petitioner that despite their several oral and written requests their alleged cultivatory possession was deliberately not recorded by the Respondents. This is a devious drama for dispossession, enacted by the Administration.

14. The Petitioner has filed certified copies of the Khasra Girdawari for the years 1977-1983 evidencing his continuous possession. In column 4 thereof the Gaon Sabha has been mentioned as the tenure holder as classified in Part I of the Khatauni. In the year 1977-78 both the Kharif as well as Rabi crops had been sown; in 1978-79 Kharif; in 1979-80 Kharif and Rabi; in 1980-81 Rabi and in 1981-82 Kharif. In all these years the possession of the Petitioner, albeit allegedly illegal, had been recorded. Mr. Bansal has drawn my attention to the fact that from 1991-92 till 1997 the Petitioner had received water from the Delhi Administration, Development Department, Minor Irrigation Division. Although Mr. Shali had made light of this submission as not sufficiently and properly indicative of the Petitioner's cultivatory possession, in the overall conspectus of the case it also gives credence to the Petitioner's grievance that his cultivatory possession has been deliberately not recorded. It is also difficult to accept the Administration's version either that the land which was successively being cultivated all of a sudden became banjar or barren, or that it was in the possession of the Gaon Sabha. After the Balbir Singh Judgment, the Respondents' were expected to record the name of the person in possession, not for the past years or with retrospective effect, but for the future. Keeping the evidence available on the records in perspective, the only conclusion possible is that the Petitioner's possession would have been mentioned in the Khasra Girdawari for the year 1995-1996 onwards. It is indeed reprehensible that it necessitated the filing of this contempt petition in 2000 to move the Respondents from recording actual possession in the Khasra Girdawari for that year onwards. Mr. Shali has argued that these are questions of fact which should not be adjudicated upon in contempt proceedings. This argument is similar to what is often encountered in writ petitions where Respondents deny the factual matrix spelt out in the petition and thereafter seek a dismissal of the writ petitions on the grounds that it involves disputed questions of fact. Such arguments have resolutely thwarted by Courts of law. In the present case I consider that a miscarriage of justice would result from declining to arrive at a conclusion of fact on the preponderant evidence available on the record. Contempt would be compounded. The pleadings in response to this petition, already quoted above, are deliberately misleading. I am also aware of the legal presumption in favor of the correctness of revenue records but this is not an unimpeachable presumption.

When a matter has been argued threadbare, it would become the bounden duty of the Court to return a finding on this topic, rather than circumventing and procrastinating this duty by sending the parties to a Civil Court.

15. It is in this analysis that the sundry following conclusions are arrived at. Firstly, that there is no limitation for proceedings under Article 215 of the [Constitution of India](#). Such proceedings are imperative where the law enforcers and law-keepers become law transgressors, somewhat like Jekyll and Hyde. In this case it is my considered opinion that the Respondents had discontinued recording the possession of the Petitioner pursuant to amendments carried out in 1983 which were subsequently struck down by the Division Bench in 1995. It was expected of the Respondents to correct their error in 1995. Instead of doing so they have compounded the mistake by continuing to adopt the position that the land in question was barren or banjar and was in the possession of the Gaon Sabha. Where the rights of private individuals come into collision the Courts would not ordinarily take recourse to Article 215 where the period of limitation prescribed under the Contempt of Courts Act has expired. This is a classic case where Article 215 should be pressed into action since it is the Authorities are guilty of not implementing a Judgment in letter and spirit. Secondly, the failure to correctly fill up the Khasra Girdawari arises from year to year. The petition has been filed in July 2000 but the Khasra Girdawari for 1998-99 and 1999-2000 continue to reflect and record the possession of the Gaon Sabha and incorrectly depict the land in question as banjar. Thirdly, the Respondents have contended that no stay of the operation of the Judgment of the Division Bench had been granted, yet mindful of that fact the unambiguous terms of Judgment have not been implemented. The Respondents' disobedient conduct is willful and contumacious. Fourthly, the pleadings in the Reply Affidavit of Respondent No.2, dated 4.10.2000 are not borne out by any official record, contrary to the verification. This also indicates a willful and contumacious disregard or rather a recalcitrant refusal to obey the Orders of the Division Bench affirmed by the Apex Court. The Respondents' conduct commends the initiation of proceedings under Section 340 of the Criminal Procedure Code. Finally, after the pronouncement of the Judgment of the Division Bench and the imprimatur granted to it by the Hon'ble Supreme Court the Respondents still continue with their illegal practice of not recording the actual

possession of the land, resulting in the filing of a number of writ petitions and suits in Courts of law. Unless such attitude and conduct is tackled with a firm hand orders of the Court will not be followed causing not merely unbearable suffering to the citizens but also the explosion of legal dockets. Respondent No.1, Shri B.S. Bhalla, has been served but has not filed any defense in writing. Appearance has variously been entered either for Respondent No. 2 (Respondent) or for the Respondents. I find the Respondents guilty of having committed Contempt of the Judgment of the Division Bench, pronounced on January 17, 1995. For sentencing, renotify on 12th March, 2004 on which date the Respondents shall be personally present.

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