Tek Chand and ors. Vs. Development Commissioner, Delhi and ors.

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Court : Delhi

Decided On : Aug-06-1982

Reported in : 23(1983)DLT1

Judge : M.L. Jain, J.

Acts : Delhi Land Reforms Act, 1954 - Sections 7(1) and 74; Delhi Panchayat Raj Act, 1954 - Sections 18; Delhi Land Reforms Rules, 1954 - Rule 47; Constitution of India - Article 15

Appeal No. : Civil Writ Appeal No. 1517 of 1973

Appellant : Tek Chand and ors.

Respondent : Development Commissioner, Delhi and ors.

Advocate for Pet/Ap. : O.P. Tyagi and; D.S. Narula, Advs

Judgement :

M.L. Jain, J.

(1) In Revla Khanpur, Delhi, 1290 Bighas5 bids was of pasture land was lying vacant. The Gram Panchayat by its resolution dated 6-3-1973 made some allotment of land to 85 persons. This resolution could not be given effect to because the necessary permission from the Development Commissioner was not obtained. The Panchayat thereupon passed another resolution on 10-7-1973 by

which 260 Bighas and 16 bids was of land was allotted to 55 persons, one acre each, at the rate of Rs. 5.00 per acre for five years. By this writ petition filed on 13-11-1973 these allotments were challenged by four persons) out of whom Chhotto at his request was deleted on 14-7-1982 from the array of the petitioners, leaving Tek Chand, Bale Ram and Bharat Singh as petitioners.

(2) The first contention of Mr. 0.P. Tyagi, the learned counsel for the petitioners, is that under Sub-section (2) of Section 74 of the Delhi Land Reforms Act, 1954 (herein the Act), the Gaon Sabha alone has the power to admit any person as Asami on a five-years' lease to any land which forms part of the cultivable or uncultivable waste area of the village which has vested in the Gaon Sabha under Section 7 of the Act. But instead of the Gaon Sabha, the Gram Panchayat has allotted the land. Under Clause (m) of Section 18 of the Delhi Panchayat Raj Act, 1954 it is one of the duties and functions of the Gram Panchayat to make reasonable provision within its jurisdiction inter-alia for establishment and care of a common grazing ground. The land in question being grazing ground, it was all the more reason that the Gram Panchayat could not and should not have distributed the pasture land contrary to its duties and functions. But it has to be noted that the Gram Panchayat has simultaneously also the duty and function to make reasonable provision for reclamation of waste land and bringing waste land under cultivation, vide clause (c) of the said Section 18. No doubt, Section 74 of the Act confers powers on the Gaon Sabha but Section 32 of the Delhi Panchayat Raj Act, 1954, provides that all the duties, powers and functions of the Gaon Sabha, shall be exercised, performed or discharged by the Gaon Panchayat and not otherwise. In Khazan Singh v. Development Commissioner and Others, C W. 1016 of 1971, decided on 144-1977, it was, however, held by a learned Judge of this Court that the decision to allot the land and in particular selection of the land is to be made by the Gaon Sabha in the manner set out in Rule 47 of the Delhi Land Reforms Rules, 1954, (herein the Rules). But the actual letting out and selection of the persons to whom the land is to be allotted is to be made by the Gram Panchayat. The learned Judge further proceeded to say that when such a decision of the Gaon Sabha is implemented by the Gaon Panchayat, it will be a decision of the Gaon Sabha itself and will be open to cancellation under Section 75(2) of the Act. If the decision is taken in any other manner, it will not be a decision of the Gaon

Sabha and will be invalid under Sections 73 and 74. The learned Judge had found in that case that the decision was not taken by the Gaon Sabha, rather, it was taken against the wishes of the Gaon Sabha. Now, in the face of the wide wordings of Section 18 of the complementary provisions contained in the Panchayat Raj Act, the interpretation put upon Section 74 of the Act and Rule 47 of the Rules by the learned Judge appears to be a restricted one, but I do not wish to propound a different view and even accepting that position, I find that in this case except by way of a general allegation that the allottment was against law and Constitution, no averment has been made in the petition that no decision was taken by the Gaon Sabha of its intention to allot any land under the Act. Without a specific allegation, it is not possible to say that the Gaon Sabha had not, in fact, taken the decision to allot the lands out of the pasture land of the village. Rather, the challenge in the petition and the rejoinder has been that the Gaon Sabha being a body successor to the proprietors of the village did not have full powers to admit any person as a Bhumidar or Asami to the common utility lands of the village, which is a proposition which cannot be supported by anything contained in the Act. It also appears to me that about one thousand Bighas of land is still vacant and is available for pasture. I, thereforee, reject the first contention of Mr. Tyagi.

(3) The second contention of Mr. Tyagi is that the land in question was a pasture land and not a waste land and, thereforee, could not be allotted under Section 74 of the Act. Under Sub-section (2) of Section 74 of the Act, the Gaon Sabha has a right to allot cultivable or uncultivable waste area of a village not included in a holding and which are vested in the Gaon Sabha under Section 7 thereof. According to Section 154 of the Act, as from the commencement of the Act, all lands whether cultivable or otherwise except those comprised in a holding or grove vest in the Gaon Sabha. There is no doubt thereforee) that waste land includes both cultivable and uncultivable area and I have little hesitation in saying that the land in question was a cultivable waste. The learned counsel referred to Sub-section (1) of Section 7 of the Act which says that all rights of an individual proprietor or proprietors pertaining to waste lands, grazing or collection of forest produce, etc., shall be terminated upon the commencement of the Act. The said provision, it was urged, makes a distinction between the rights in waste land and grazing lands. I do not think that Sub-section (1) of Section 7 excludes grazing

lands from the waste area. It only purports to terminate the rights of the proprietor and vest them in the Gaon Sabha in so far as they relate to waste land, grazing rights, etc. By making a specific mention of grazing rights, it does not purport to say that grazing lands are not waste lands. The definition of land given in Section 3(13) of the Act includes lands for village pasture. I am, thereforee, unable to uphold the contention that pasture lands are not allottable under Section 74 of the Act.

(4) The third ground of attack is that the allottment was bad in law because no applications were invited for allotment and procedure provided in the Rules was not followed. Rule 47 of the Rules requires that the Gaon Sabha shall announce by beat of drums in the Gaon Sabha area in which the land is situate, the number of plots, their areas and the dates on which admission thereto is to be made. In a similar situation, where Rule 47 was not complied with) in Khazan Singh v. Development Commissioner etc., C.W. 969 of 1978, decided on 167-1980, Chadha J. held that allotments of land made without following the procedure of Rule 47 shall be void. In an L.P.A. against this judgment in Development Commissioner v. Khazan Singh etc., Lpa 196 of 1980, decided on 16-4-1982, to which I was a party, non-compliance of such procedure was not considered fatal to the allotments, though it was not said so in so many words. The allotments were allowed to stand and the eligibility of the allottees was directed to be reconsidered by the Deputy Commissioner at the time of grant of Bhumidari rights. It will be noticed that Rule 47, does not require that applications are to be invited. The whole exercise has to be undertaken by the Gram Panchayat except that the intention to allot land, size of the plots and the dates of allotment has to be announced by beat of drums. Unless a specific averment is made that no such announcement was made by beat of drums in the Gaon Sabha area with regard to allotment of plots, it is not possible to say that Rule 47 was violated and to disbelieve the respondents that all the formalities of Rule 47 were complied with.

(5) It was next urged that the impugned resolution of the Panchayat was invalid because the meeting of the Panchayat was not held according to the Rules. Mr. Tyagi invited my attention to certain rules of the Delhi Panchayat Raj Rules, 1959. It was contended that Rule 68 was violated inasmuch as no notice of at least ten

days was given before the meeting of the Panchayat was held. Rule 71 provides that such a notice shall state the nature of the business to be transacted at the meeting and that the meeting shall be in a quorum of three members of the Gram Panchayat including the Pradhan and Up-Pradhan. Here again there is no specific allegation that no notice of the Panchayat meeting was given. The resolution dated 10-7-1973 shows that 15 persons were present which included all the members of the Panchayat and other respectable members of the village. At any rate the other members of the Panchayat have made no such grievance. In this view of the matter, the procedural requirement which was meant for the benefit of the Panchayat executive shall be deemed to have been complied with.

(6) The next contention of Mr. Tyagi is that the very list of allotment is arbitrary and mala fide. He pointed out that the list of allottees includes names of the Panchayat members and their relations and allotment was made to every individual members of certain families. The list of eligible persons was not drawn in accordance with preferences provided in Section 75 of the Act. It was further pointed out that the allottees were not a group of landless labourers or landless labourers residing in the village. They were rather gainfully employed in Municipal Corporation or the Government in Delhi. No criteria was fixed for ascertaining the economic status of the allottees. It may perhaps be true that the allottees are in Government or Municipal service, but it is not the contention of the petitioners that they were not landless. The case of the respondent is that allotment was made to landless Harijans. It may further be noted that Section 76 provides for a residuary category and if the persons mentioned in (a) to (d) categories are not available, land may be allotted to any other person. The allottees may validly fall into this category. It is nowhere the case of the petitioners that they or any other person fell into a preferential category and were not allotted land. Mr. Tyagi also contended that the allotment was made on caste basil and wasviolativeofArticlel5 of the Constitution. The case of the Gram Panchayat is that in accordance with the policy of the Government land was being allotted to landless Harijans and this policy was approved by the Division Bench in its decision to which I have already made a reference above. The Constitution itself envisage social preference for Scheduled Castes and Tribes. It is a case of valid classification. I have, thereforee, no hesita-corporation in rejecting this contention of Mr. Tyagi.

(7) The last contention was that the entire distribution of land should be regulated by following the proper procedure of allotment in accordance with law because possession has not yet been delivered to the allottees. Respondents have denied this contention and have stated that possession has been given on 13th and 14th November, 1973, a day or two before the stay order was given by this court on 15-1 1-1973. It was alleged that the contention of the respondents was false. The Pradhan had moved an application on 16-11-1973 to the S.D.M. that police aid be provided for transferring possession of the said land. As a matter of fact, possession has not yet been delivered, documents have not yet been handed over to the allottees and no registration of mutation has yet taken place and the order of possession has been ante-dated by the Panchayat Even as late as 26-4-1982, the respondents were asking for permission for cultivation and vacation of stay order. I may have gone into all these contentions, but in view of the fact that I do not find anything wrong with the allotment, I need not go into this question at all.

(8) Considering all the aspects of the case, I do not find any merit in this writ petition. It is hereby dismissed. There shall be no order as to costs.