

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No.387/2011

**Appeal under Section 64 of
Delhi Land Revenue Act,1954**

In the matter of:-

- 1. Sh. Bhim Singh
S/o Sh. Maha Singh
R/o VPO, Khera Khurd
Delhi** **....Appellant**

**(Represented by Shri
K.N. Popli, Counsel for
Appellant)**

VERSUS

- 1. Tehsildar/CO
Narela BDO Office Complex
Alipur Delhi**
- 2. Gaon Sabha Village Khera Khurd
Through office on Special
Duty Land Reforms, Delhi
Old Civil Supply Building
Tis Hazari,
Delhi** **....Respondents**

**(Represented by Shri T.S.
Dabas, Counsel for Gaon
Sabha)**

JITENDRA NARAIN, FINANCIAL COMMISSIONER

Dated, 1st March 2016

- 1. The Case history & facts:-** The present appeal under Section 64 of Delhi Land Revenue Act, 1954 is filed against the impugned order dated 13.06.2011 passed by Collector(North West) in appeal no. 78/DC/NW/2010 and 64/DC/NW/2011 rejecting thereby the application of appellant for recording of cultivatory possession on the Gaon Sabha land(P-5A).
- 2. The appellant:-** case is that he has been in actual, physical, continuous and cultivatory possession of the agricultural land

measuring 1 bigha 10 bishwa out of Kh. No. 76/8/1/1(1-08), 26(0-01) and 27(0-01) of village Khera Khurd, Delhi for the last 30 years and he has been cultivating each year for Rabi and Kharif crops. It is stated by the appellant the land in question stands in the name of Respondent no. 2 i.e. Gaon Sabha. However as stated by appellant that no proceedings for ejectment of appellant have been initiated by any of the revenue authorities.

3. It is stated by appellant that he had filed applications dated 05.03.2002, 07.03.2003, 22.08.2003, 03.02.2004, 20.08.2004, 05.02.2005, 03.09.2005, 06.02.2006, 22.08.2006, 24.01.2007, 05.09.2007, 11.02.2008, 24.03.2008, 22.08.2008, 22.01.2009, 09.09.2009, 25.01.2010, 11.08.2010, 20.01.2011 and 28.03.2011 in the office of respondent No. 1 for issuance of Khasra Girdwari (P-5A). However despite the report of halqa Patwari that the appellant is in cultivatory possession of the said land, the appellant was not issued Khasra Girdawari till date except for the year 2009 and 2009-2010.
4. It is further stated by appellant that due to amendment in Rule 63 to 67 of DLR Rules, the procedure for filling Form P-5 was abandoned. However these amendments were challenged in Writ Petition before High Court of Delhi and Hon'ble High Court of Delhi held that these amendments are ***ultra-vires*** which was also upheld by Hon'ble Supreme Court of India in **AIR 2000 SC 2143**. Consequent upon Hon'ble Supreme Court Judgment, Govt. issued notification in the year 2001 whereby recording of cultivatory possession was again made mandatory. However, despite amendment in rules the respondents failed to make entries in Form P-5 and P-5A in spite of repeated requests.
5. It is further stated by appellant that as respondents failed to make entries in Form P-5 and P-5A in spite of repeated requests the appellant filed a ***Writ Petition No. 20465/2005*** titled *Bhim Singh Vs. Tehsildar/CO & Ors.* The Hon'ble High Court vide order dated 25.10.2005 dismissed the petition by holding that the appellant has adequate alternate remedy available with them as

per Section 26 of Delhi Land Revenue Act, 1954. In compliance of the order dated 25.10.2005 the appellant filed application u/s 26 of DLR Act, 1954 for correction of mistake or error and to fill up Form P-5A and enter the name of appellant. It is stated by appellant that consequent upon filing of application the report was called from Patwari and after the report of Patwari the name of appellant was entered in the form P-5A. However despite the report of halqa Patwari to the effect that appellant is in cultivatory possession of the said land only three Form P-5A was filled in favour of petitioner.

6. It is stated by the petitioner that since trial court was not passing appropriate order to enter the name of appellant in column 21 of form P-4 (Kasra Girdawari), the appellant filed second **Writ Petition No. 5620/2007**. Hon'ble High Court of Delhi vide order dated 05.03.2008 directed the respondent to dispose of the application within six week times. However respondent failed to pass any order on the said application. Where as respondent no. 1 that is Tehsildar/CO vide order dated 25.04.2008 has dismissed the said application. There after appellant filed another **W.P. (C) 7312/2008**. The said writ petition was disposed vide order dated 17.09.2010 by quashing the order dated 25.04.2008 of Tehsildar and further directing the Dy. Commissioner revenue Kanjhawala, Delhi to dispose off the said application with in two months in accordance with law.
7. It is further stated by appellant that pursuant to order dated 17.09.2010, the Dy, Commissioner North West vide order dated 13.12.2010 dismissed the application. Thereafter appellant filed contempt case no 66/2011 however the said contempt case was not pressed after assurance from the respondent. However still no fruitful solution came therefore the appellant filed another **Writ Petition No. 3670/2011**. Hon'ble High Court order dated 26.05.2011 directed the respondent to decide the application within three weeks. However Dy, Commissioner vide impugned order dated 13.06.2011 has dismissed both the application. Against the impugned order dated 13.06.2011 the appellant filed

W.P. (C) 4737/2011 which was later on withdrawn on 23.09.2011 with the liberty to file the present petition/appeal.

8. Hence the present appeal the appellant prayed for set-aside the impugned order dated 13.06.2011 and seeking direction to revenue authorities to fill up form file P-5A and enter the name of appellant in the state form.
9. **Respondents:-**No reply filed on behalf of respondent no. 1 i.e. Tehsildar/CO however respondent no. 2 i.e. Gaon Sabha in their reply has contended that the appellant is making an effort by way of filing the present appeal to encroach upon the Gaon Sabha land, hence the appeal is not maintainable and deserves to be dismissed as there is no infirmity in the impugned order as alleged in the present appeal. The Ld. D.C. (NW) has rightly passed the reasoned order based on the decision given by the Apex Court as mentioned therein i.e. **Jagpal & Ors. Vs. State of Punjab & Ors.**
10. It is further contended by the Gaon Sabha that any relief as prayed herein by the appellant is granted, which amount to encroachment of committing the illegal act of encroachment over the Gaon Sabha land by the appellant as well as other members of the community, which law does not permit, hence the appeal is liable to be dismissed on this ground alone.
11. It is stated by the Gaon Sabha that the record of the suit land states in itself that the answering respondent is in possession of the suit land. Hence, no question of ejectment of proceedings is required as the suit land is in possession of the answering respondent. Whereas the appellant by way of filing the present appeal wants to kept the Gaon Sabha land and to legalize his illegal act of encroachment, which can not be permitted under the law.
12. It is further contended by the Gaon Sabha that it is denied that the respondent are not performing their duties as per the law.

However, it is submitted that the respondents are correctly not recording the possession of the appellant over the suit land belonging to the Gaon Sabha and respondent no. 1 passed the correct and reasoned order as per the factual position of the suit land.

13. It is further stated by Gaon Sabha that that the decision of the Supreme Court is squarely applicable in the present case of the appellant and the learned D.C. rightly and correctly passes the order as per the decision of the Apex Court mentioned therein. The said order is reasoned order and no interference is required and any relief as prayed therein granted to the appellant amounts to encroachment to the appellant for his illegal act of encroachment over the government land i.e. Gaon Sabha land, which the law does not permit.
14. The arguments of both the parties are heard in detail and material placed on record are perused. Admittedly the appellant are claiming the cultivatory possession on the land which is recorded in the name of Gaon Sabha. It is also not disputed by the appellant that alternative land was allotted during consolidation.
15. The claim of the petitioner to allot the land adjacent to his land on the ground that he is cultivating the land since 1982. Whereas the Gaon Sabha is saying that it is not tenable to allot land to petitioner as he has already been allotted land during consolidation.
16. I find no reason to interfere with the impugned order dated 13.06.2011 of Collector (North West) because these common and public land of the Gaon Sabha and for the common use in the past, present and for the future. Private individuals and officers under any garb/excuse or cover on the basis of the individual clout should not have an easy walkover to such common heritages and should not be allowed to takeover/grab such lands in the garb of doing public services. The Divisional Commissioner may also consider an appropriate inquiry against commissions or omissions by any official, in this case, and if so found, proceed against such

officials who may neglected their duties towards such common lands.

17. With above findings the present appeal is disposed off. Announced in open court on 1st day of March 2016.

(JITENDRA NARAIN)
FINANCIAL COMMISSIONER, DELHI
Dated 1st March, 2016