

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No.38/2013

**Appeal under Section 187 of
Delhi Land Reforms Act,1954**

In the matter of:-

**Sh. Mahesh Tyagi
S/o Sh. Mahender Singh
R/o Village Rewla Khanpur
Najafgarh, New Delhi**Appellant

**(Represented by Shri
Anuj Kumar Garg, Counsel for Appellant)**

VERSUS

**Sh. Kishan Lal (died)
Through his legal heirs
1. Shri Harvinder (Major)
2. Shri Deepak (Major)
Both S/o Shri Ram Raj grandson of Shri Kishan Lal
Both R/o Village Rewla Khan Pur,
Najafgarh, New Delhi.** Respondents

**(Represented by Shri Pawan
Sharma, Counsel for R-1 & R-2)**

JITENDRA NARAIN, FINANCIAL COMMISSIONER

Dated, 1st March, 2016

1. **The case history and facts:-** the present appeal filed under Section 187 of Delhi Land Reforms Act, 1954 against the impugned order dated 14.01.2013 passed by Dy. Commissioner/Collector(South West) in appeal no. 01/07 titled Mahender Singh Vs. Krishan Lal & Ors. and order dated 18.12.2006 passed by Revenue Assistant/SDM, Najafgarh in case no. 149/2001. Vide impugned order dated 14.01.2013 Dy. Commissioner/Collector (South West) has observed as:-

"In view of the aforesaid conclusions and the demarcation report dated 25.06.2009 which is based on the TSM Survey, I am of the opinion that the present appeal holds merit. Therefore, same is allowed and the case is remanded back to the SDM/RA with the direction to decide the case on merits keeping in view the demarcation report dated 25.06.2009 which is available on record. However, if the respondent hereinabove requests for fresh

demarcation then the same be allowed by the RA through TSM and the cost of which shall be borne by the appellant hereinabove. It is further ordered that till the disposal of case both the parties will maintain the status quo. "

2. **Appellant:-** The case of the appellant is that he is the LR of the earlier appellant i.e. Shri Mahender Singh (now deceased). The grievance of the appellant is that SDM/RA vide order dated 18.12.2006 had issued ejectment order for appellants from the land measuring 5X 82 ½ approx. in the Khasra No. 186 of Village Rewla Khanpur, Najafgarh, New Delhi. Feeling aggrieved to this order the appellant filed appeal u/s 185 of the DLR Act, 1954 before Dy. Commissioner/Collector(South West).
3. It is further stated by appellants that the boundary of plot no. 185 and 186 is common and both plots are adjacent to each other. A suit was filed before SDM/RA u/s 84 of DLR Act on the basis of demarcation report dated 10.04.2006. The said demarcation report was objected by the appellant on the grounds that according to rule 403 and 404 of DLR Rules 1962 that the said demarcation report does not show the nature of dispute and no actual measurement of Khasra is shown in the demarcation report. The said demarcation report was also challenged on the ground that it is done without proper reference points/fixed points.
4. It is also contended by the appellant that the said demarcation was conducted in the absence of appellant and no notice was issued to them for the said demarcation. Hence it is the contention of the appellants that in view of the above shortcomings the above demarcation can not be relied upon and since the ejectment order was passed relying upon the said demarcation hence the same is not sustainable in the eyes of law.
5. Against the order of SDM/RA Najafgarh an appeal was filed before Dy. Commissioner/Collector, South-West with the prayer to set aside the impugned order dated 18.12.2006 as the impugned order dated 18.12.2006 was passed on the basis of demarcation report dated 10.04.2006. However, the authenticity of demarcation report dated 10.04.2006 had not been proved by the Trial Court. However, Dy. Commissioner/Collector(South West)

vide impugned order dated 14.01.2013 had remanded the case back to SDM/RA with a direction to decide the case on merits keeping in view the demarcation dated 25.6.2009.

6. Hence by present appeal the appellant has prayed for quash/setting aside the impugned order dated 14.1.2013 as well as to set aside the order dated 18.12.2006 passed by SDM/RA, Najafgarh, Delhi.
7. **Respondents:-** in their reply has stated that the present appeal is not maintainable on the ground that the first appeal against the impugned order dated 18.12.2006 has already been heard and decided by the Dy. Commissioner. It is further contended by the respondents that the appellant has not challenged the demarcation report dated 10.04.2006 and 25.08.2006 nor had he challenged the same under Section 28 of Delhi Land Reforms Act hence the same has attained finality. It is also contended by the respondent that appellant is in excess possession of land as per demarcation done by TSM. It is also contended by respondents that they do not have any objection from the demarcation report dated 25.06.2009 provided his land holding is made good after demarcation.
8. I have heard the arguments of both the parties and perused the materials placed on record.
9. Admittedly, the petitioner is not totally aggrieved by the order of demarcation by TSM which is more reliable than other demarcation/manual demarcation. Admittedly the counsel for respondents also agrees with TSM demarcation report and stated that his land should not be reduced and his total area should be maintained. It is also admitted that there is somebody having excess land which forms a chain. According to TSM report the land of the petitioner is in the area of the respondent and the respondent land has been found in the share of his uncle.
10. In view of the above findings, the present appeal is disallowed as there is no question of facts or law which is to be decided by this court. It is however made clear that Dy. Commissioner/Collector shall take necessary action based on the TSM demarcation report which is a scientific survey, to see that rightful persons are put in rightful possession of their legitimate area and if any further

survey/ demarcation to be done on the basis of TSM survey then it would be at cost of govt. in view of the submission of petitioner that they can not afford the cost of another demarcation. Due notice to all parties as per law should be given, in case there is any further demarcation on basis of the TSM survey.

11. With above observation the present appeal is disposed off. Announced in open court on 1st March, 2016.

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