

THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 134/2010

**Revision Petition under Section
187 of Delhi Land Reforms Act, 1954**

In the matter of:-

- 1. Sh. Gyanender Shokeen
S/o Shri Raj Singh,
Village & P.O. Nangli Poona,
Delhi.**

.....Petitioner

(Represented by Sh. D.S. Khatri, Adv.)

Versus

- 1. Gaon Sabha Nangli Poona,
Through Director of Panchayat,
1, Kirpa Narain Marg,
Delhi-110054.**
- 2. Union of India
Through Under Secretary (Development),
Govt. of NCT of Delhi,
5, Sham Nath Marg,
Delhi-110054.**

.....Respondents

(Represented by Sh.S.K. Suryan, Adv.)

Case No.228/2010

In the matter of:-

- 1. Gaon Sabha Nangli Poona,
Through Director of Panchayat,
1, Kirpa Narain Marg,
Delhi-110054.**

.....Petitioner

(Represented by Sh.S.K. Suryan, Adv.)

Versus

- 1. Sh. Gyanender Shokeen
S/o Shri Raj Singh,
Village & P.O. Nangli Poona,
Delhi.**

.....Respondent

(Represented by Sh. D.S. Khatri, Adv.)

S. S. YADAV, FINANCIAL COMMISSIONER

Order dated 17th February, 2017

1. Present Revisions under Section 187 of Delhi Land Reforms Act, 1954 have arisen against the impugned order dated 31.3.2010 passed by Dy. Commissioner (North West) rejecting the appeal of Gaon Sabha on and against the order of SDM/RA (Narela). Hence, petition bearing no. 228/2010 is preferred by Gaon Sabha, Nangli Poona against the rejection of appeal by Dy. Commissioner. However, Dy. Commissioner vide impugned order while dismissing the appeal of Gaon Sabha, Nangli Poona has vested 03 biswa of land into Gaon Sabha for being used for non-agricultural purposes. Therefore, revision petition bearing no. 134/2010 is filed by Sh. Gianender Shokeen S/o Sh. Raj Singh (i.e. petitioner in Case No. 134/2010 and respondent in case no. 228/2010). Though case no. 134/2010 is filed as Second Appeal under section 185 of DLR Act, however, as there is no provision of second appeal as per schedule I of Delhi Land Reforms Act, 1954 therefore case no. 134/2010 is being treated/disposed of under Section 187 of Delhi Land Reforms Act, 1954. Since, these petitions arise out of common impugned order, therefore the same are being disposed of through this common order.
2. From the factual matrix of these petitions it transpires that the appellant in case no. 134/2010 (respondent in case no. 228/2010 is owner/bhumidhar of land bearing kh. No. 15/10 (4-16) of village Nangli Poona, Delhi. The proceedings under Section 81 of Delhi Land Reforms Act, 1954 were initiated against the appellant pursuant to Halqa Patwari's report. However, these proceedings were subsequently dropped. Against this order of SDM/RA, Gaon Sabha Nangli Poona through BDO (North West) went into appeal before the Dy. Commissioner and the Dy. Commissioner vide order dated 31.3.2010 though dismissed the appeal of Gaon Sabha, Nangli Poona, however, vide the same order, he vested 03 biswa land out of the suit land for being used as non-agricultural purposes. Hence, Gaon Sabha approached this court assailing thereby order of Dy. Commissioner dated 31.3.2010, whereby

appeal of Gaon Sabha has been rejected. On the contrary, the appellant in case no. 134/2010 (respondent in case No. 228/2010) challenged the order of Dy. Commissioner in respect of area measuring 03 biswa which had been ordered to be vested in Gaon Sabha.

3. The Gaon Sabha Nangli Poonia assails the order of Dy. Commissioner on the grounds *inter alia* that lower appellate court failed to appreciate that there is boundary wall around the suit land whereas, there is no permission for the said boundary wall and some work relating to paper is still going. Gaon Sabha further stated that Dy. Commissioner's order did not mention the reason, ground and facts of rejection of appeal and the order passed is against the facts and law. Gaon Sabha has further asserted that Dy. Commissioner failed to exercise the jurisdiction which was vested in him and the order passed by him is not sustainable as the same is passed on conjuncture and surmises. Hence, Gaon Sabha prayed that present petition be admitted and order impugned be set aside.
4. Respondent in case no. 228/2010 (petitioner in case no. 134/2010) has contended that proceedings u/s 81 of Delhi Land Reforms Act, 1954 were initiated in the year 2006 which were however dropped in the year 2007 by then SDM/RA. Thereafter Gaon Sabha went into appeal before Dy. Commissioner and Dy. Commissioner vide impugned order has dismissed the appeal of Gaon Sabha on the basis of Halqa Patwari's report wherein it has been mentioned that subject land is being used for agricultural purposes. However, while dismissing the appeal of Gaon Sabha, 3 biswa of land had been vested in Gaon Sabha. Against the said vesting of land respondent filed another petition bearing no. 134/2010 challenging thereby vesting order passed by Dy. Commissioner.
5. It is the contention of respondent (petitioner in case no. 134/2010) that proceedings under Section 81 of DLR Act, 1954 were initiated on a false and frivolous report filed by Halqa Patwari wherein admittedly, the land in question is being used for agricultural purposes only. It is further stated by respondent (petitioner in case

no. 134/2010) that out of total area of 4 bigha 16 biswa, 4 bigha 5 biswa land was converted into lal-dora and comes inside phirni of the village. Remaining 11 biswa of land remains as agricultural which was strictly being used for agricultural purposes only. This fact is confirmed by the Tehsildar's report dated 21.1.2011. However, it is contended by petitioner in case no. 134/2010 that during the pendency of appeal before Dy. Commissioner, a report was submitted by Halqa Patwari on 22.02.2010, wherein it is mentioned that out of 4 bigha 16 biswa, 4 bigha 5 biswa comes inside phirni. Out of the remaining 11 biswa, 8 biswa is being used for agricultural purposes; however 03 biswa of land is being used for non-agricultural purposes. On the basis of said report, Dy. Commissioner, vide impugned order has vested the 3 biswa of land into Gaon Sabha.

6. The petitioner in case no. 134/2010 (respondent in case no. 228/2010) challenged the vesting order on the grounds *inter-alia* that Dy. Commissioner has passed the order in a mechanical manner and without giving any opportunity of being heard. It is further contended that 3 biswa of land is being used for making compost manure out of cows and buffalos-dung and other waste of remains of papers etc. and the land is strictly being used for agricultural purposes. But, Dy. Commissioner failed to consider the Khasra Girdawari available on records which clearly suggests the continuous agricultural use of the land. He further stated that Dy. Commissioner failed to consider that proceedings under Section 81 of Delhi Land Reforms Act, was barred by limitation. Hence, the petitioner challenged the Dy. Commissioner Order as it is violative of basic principles of law as the Dy. Commissioner did not considered the materials available on record and passed the impugned order in a mechanical manner.
7. I have heard the arguments of parties and have carefully perused the material placed on record. The quantum of land of present petitions is 4 bigha 16 biswa, out of which 4 bigha 5 biswa is admittedly part of lal-dora/ inside phirni, therefore 4 bigha 5 biswa land is outside the purview of these petitions. As regards, the remaining 11 biswa, it is not disputed by either party that during

the pendency of appeal before Dy. Commissioner, a field report was filed by Halqa Patwari on 22.2.2010, wherein it is clearly mentioned that out of 11 biswa 8 biswa is being used for agricultural purposes however, 3 biswa is being used for non-agricultural purposes. Based on the same report, Dy. Commissioner vide order impugned here has dismissed the appeal of Gaon Sabha, however vested 3 biswa of land into Gaon Sabha.

8. During the pendency of petition, this court vide order dated 18.11.2010, directed the revenue authority to get the second site inspection by revenue officials and submit its report. Pursuant to direction of this court, Consolidation Officer (North West) vide report dated 20.01.2011 has furnished the report which is on record. The report of revenue officials indicates that land bearing kh. No. 15/10(0-11) is being used for agricultural or its allied purposes. However, the Tehsildar in his report has mentioned that the subject land is built up. Therefore, In my considered view, the petitioner in case no. 134/2010 (respondent in case no. 228/2010) deserves an opportunity of being heard and present his case before Dy. Commissioner before making the vesting order of Dy. Commissioner absolute.
9. In view of the observations made hereinabove, the order dated 31.3.2010 passed by Dy. Commissioner(North West) is modified to the extent that this order shall be considered as conditional order under Section 82(2) of Delhi Land Reforms Act, 1954. The petitioner in case no. 134/2010 (respondent in case no. 228/2010) is directed to converted back the said land into agricultural purposes within three months from the date of this order. Dy. Commissioner (North West) is directed to call a report from field staff after expiry of three months period and thereafter pass a reasoned order based on the report of field staff regarding use of the land.
10. With above terms, the present petitions are disposed of. No Order as to costs.
11. Announced in the open court on 17th February, 2017.

(S.S.YADAV)
FINANCIAL COMMISSIONER, DELHI
17th FEBRUARY, 2017