

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No.138/2012

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

In the matter of:-

- 1. Sh. Karan Singh
S/o Sh. Rajbir Singh
R/o VPO, Dichaon KalanPetitioner**

**(Represented by Shri
Vinod Sehrawat, Counsel
for Petitioner)**

VERSUS

- 1. Gaon Sabha Garhi Rindhala
Through BDO North West
Complex Building
Delhi-110036 Respondents**

**(Represented by Shri Mukesh
Bhardwaj, Counsel for Gaon
Sabha)**

JITENDRA NARAIN, FINANCIAL COMMISSIONER

Dated 1st March, 2016

1. The present revision petition filed under Section 187 of Delhi Land Reforms Act, 1954 against impugned order dated 17.10.2011/19.10.2011 passed by Revenue Assistant, Saraswati Vihar, Distt North West vide which the land of the petitioner was vested in Gaon Sabha and petitioner was ejected from the suit land and subsequently on 10.02.2012 warrant of possession was issued by SDM/RA.
2. **Petitioner:** - The case of the petitioner is that the he is the recorded Co-bhumidhar of the ½ share in agricultural land out of Khasra no. 175 measuring 04 bigha 09 bishwa of village Garhi Rindhala. It is stated by petitioner that the Halka Patwari vide report dated 23.11.2010 reported regarding unauthorized construction on the land bearing Kh. No. 175 (4-9) of village Garhi Rindhala and relying on the report dated 23.11.2010 the Ld. SDM passed a restrain order dated 25.11.2010 in respect of the above mentioned land.

3. Thereafter, Revenue Assistant, passed the impugned order 17.10.2011/19.10.2011 U/s 81 of DLR Act in respect of the above mentioned land. However, it is stated by the petitioner that petitioner was neither made party nor been served with the summons of the present case.
4. It is further stated by the petitioner that the order dated 17.10.2011/19.10.2011 is not tenable in eyes of law and liable to be set-aside because it is well settled principle of law that where there are more than one co-owner each and every co-owner/co-bhumidhar is required to be served before passing the order and the same principle is confirmed by the Hon'ble Supreme Court of India in case **Kanwar Pal & Ors. Vs Gaon Sabha Kirari reported as AIR 1996 SC 2780.**
5. It is further stated by the petitioner that the mandatory provision of order 5 rule 12,13 & 17 of C.P.C regarding the service of processes on the applicants have not been complied. As per the judgment/precedents led by various High Courts reported as under.
 - a. AIR 1977 Delhi 28
 - b. AIR 1983 Patna 166
 - c. 52 (1993) Delhi Law Times 11
6. It is stated by the petitioner that the respondent Gaon Sabha has filed an execution petition and the petitioner appeared on 01.02.2012 in the aforementioned case and apprised the Ld Trial Court that the petitioner is also a co-bhumidar of the land in question and therefore a necessary party in the aforementioned execution case. The petitioner also apprised the Trial Court that the petitioner has never been served with the summons in the present case. On 14.02.2012 petitioner moved an application under order 1 Rule 10 of CPC for impleading him as party and application under order 39 Rule 1&2 for stay of the execution of the decree dated 17.10.2011/19.10.2011. It is further stated by the petitioner that when the petitioner inquire about the status of his application, the petitioner came to know that warrant of possession has already been issued on 10.02.2012.
7. The petitioner filed the present petition on the grounds amongst others that the impugned order is arbitrary, unfair, unreasonable

and untenable in law as the petitioner was never made as party and before passing the impugned order no notice was issued/served to the petitioner as per mandatory provisions of rule 21A of Delhi Land Reforms Rules 1954.

8. Hence by present petition the petitioner prayed for set aside/quash the impugned order dated 17.10.2011/19.10.2011 and warrant of possession dated 10.02.2012 and remand the case back to revenue authorities to decide the case on merits after making petitioner as party.
9. **Respondent** Gaon Sabha Garhi Rindhala did not file any formal reply however it is contended by Gaon Sabha after obtaining the stay from this court the petitioner is not pursuing his case deliberately.
10. It is further stated by Counsel for Gaon Sabha that petitioner are relying upon the Supreme Court Judgment.
11. Gaon Sabha has admitted that the name of Karan Singh has not been mentioned in the order dated 17.10.2011 and no notice was issued to him. However since the petitioner admitted themselves that there are some permanent structure on the suit land and the land is being used for non-agricultural activity the principle of natural justice will not apply, and they have no case as it is an admitted case of violation of land use.
12. Heard parties and perused records. It is not denied that the appeals are against the order dated 17.10.2011/19.10.11 and warrant of possession dated 10.02.12 . It is also not denied that they appeared before the authorities on 01.02.12 . It is also clearly admitted by Sh. Jai Parkash and Sh. Joginder the other co sharer who were present in the Court that they had out of 4 bigha and 9 biswas and only 1 bigha left for agricultural uses and rest of the area is non agricultural use and foundation for structures (neev) has been made on the rest of the area as has been clearly admitted in open court by Joginder Singh Co-Sharer and brother of Karan Singh, petitioner on 03.02.2016.

However, in view of the judgment of ***AIR 1996 Supreme Court 2780 titled as Kanwar Pal and Ors. Vs G.S. Kirari and Ors. wherein it is mentioned that Agricultural land put to non-agricultural use-vesting of land in Gaon Sabha thereof-***

ejection notice served on one co-sharer-would be no notice on other co-shares-particularly when other co-shares were in individual possession of land-notice is essential to be issued individually to all the co-sharers-order of vesting land liable to be set aside. I remand the case for due following of the due process of notice to Karan Singh etc and disposed the matter in three months. Though the ground situation and the non-agriculture use of the land is a matter of record and also admitted here and the verifiable from the spot, but the due process cannot be ignored in the interest of the natural justice.

13. With above terms the present petition is disposed off. Announced in open court on 1st March, 2016.

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