

IN THE COURT OF COLLECTOR, DISTRICT : SOUTH-WEST
OLD TERMINAL TAX BUILDING, KAPASHERA, NEW DELHI

No- 11842
Appeal No.: 83/15

20/02/2020

Case ID: 12578

Gaon Sabha Samaspur Khalsa Appellant

Vs.

Jeet Singh & Ors. Respondent

ORDER

By this order I shall dispose off the present appeal filed by the appellant against the order dated 26.02.2015 passed by SDM/RA in case No. 462/2008 where by the SDM/RA had dropped the proceedings initiated under Section 81 of the DLR Act in respect of Kh. No. 217 (2-19) situated in the revenue estate of Village Samaspur Khalsa.

Facts of the case:

1. The Halka Patwari of village Samaspur Khalsa vide report dated 11.07.2008 reported that the respondent had converted the land into non-agricultural by way of creating boundary wall on the suit land.
2. The proceedings u/s 81 of DLR Act were initiated & notice dated 27.07.2008 in form LR 48 issued to respondent and vide order dated 29.07.2008 the respondent was restrained from making further construction on the suit land.
3. That the lower court vide order dated 13.08.2010 issued conditional order with the direction to convert back the suit land in agricultural land within a period of three months.
4. That the impugned order was passed on 26.02.2015.

Grounds of Appeal:

1. That the order passed by the lower court is based on two contradictory reports dated 16.07.2014 & 14.10.2014.
2. That the LSR dated 14.10.2014 reveals that the constructed structure existing on the suit land is around 30 years old. However, no such entry has been made in the Khasra girdawari placed before the Ld. SDM/RA.
3. That the trial court has dropped the proceedings merely relying upon the status reports of Halka Patwari and even not asked for the Khasra Girdawari, which is a reliable document.
4. That the trial court has failed to consider the contents of the Gram Sabha that the alleged construction on the suit land have been raised by the respondent without seeking permission from the competent authority.
5. That the trial court has passed the impugned order purely on presumptions and surmises.

Contention of Respondent:

1. That due to shortage of land in the village, a room for keeping fodder for the cattle and garage for keeping tractor in 1985 with 3¹/₂ feet wall in a small area of the suit land.



2. That a water connection was granted by the Delhi Jal Board in 1988.
3. That, after the death of the grandfather, a Samadhi was built on a portion of the suit land in 1990.
4. That a two feet wall was constructed on the west side due to boundary dispute with the neighbor and also for protection of crop from the wild animals. However, there is no wall constructed on the Northern as well as on Southern side of the land.
5. That the report of the Halka Patwari dated 14.10.2014 also reveals that the construction is about 30 years old.

Reports and materials taken on record:

Tehsildar report dated 13.08.2019: Boundary wall along with room and Samadhi are constructed on approximately 10 Biswa on the land bearing Kh. No. 217 and the remaining land is used for agricultural purpose.

Observation:

After perusal of the report of the Tehsildar, photographs and khasra girdawari of the suit land (2015-16, 16-17, 17-18 & 18-19), it is observed that the suit land is being used for agricultural activities only. All these reports are thus consistent and the facts of the case do not seem to be in doubt. What remains to be established is whether the structure on the suit land amounts to violation of Section 81 of DLR Act.

1. To address this issue, the following provisions are highlighted

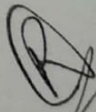
a) Section 3(12) of the DLR Act 1954, which prescribes as follows:

Improvement means, with respect to a holding.. 3(12)(ii)(c) – any work which adds materially to the value of the holding and ... includes... the reclaiming, clearing, enclosing, levelling or terracing of land

b) Section 22 of DLR Act 1954, which states that – Right of Bhumidar or Asami to the exclusive possession of land in his holding – A bhumidhar shall, subject to the provisions of this Act have the right to the exclusive possession of all land comprised in his respective holding and to use land for any purpose connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming and to make any improvement.

c) *Bihari Lal and Ors. Vs. Union of India (AIR 1979 Delhi 84) – the mere construction of building on every agricultural land does not convert it into non-agricultural land... 'Infact under Section 3(12), a dwelling house erected on the holding by the tenure holder is regarded as an improvement.'*

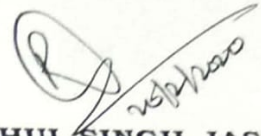
What is essential to check therefore in a case under Section 81 is whether the overall agricultural character of land has undergone a change. Some minor construction like a **tin-shed / kotha** for storing fodder or implements, hut for agricultural labourers or activities essential for promotion of agriculture should not therefore be treated as a violation of this Section of the Act. Primarily, one has to look at what is being substantially done on the land under question. Perhaps that is why in *Bihari Lal vs Union of India*, the Hon'ble Court had observed that even construction of a dwelling house on the agricultural land itself is an improvement and hence allowed.


25/2/20

CONCLUSION :-

In view of the above, this court is of the opinion that the appeal is dismissed and the order of the SDM/RA is upheld.

Given under my hand and seal on this 20.02.2020.



**RAHUL SINGH, IAS
(COLLECTOR, SOUTH WEST)**

Copy to:

1. Both the parties
2. SDM/RA (Najafgarh)
3. Guard File
4. System Analyst



**RAHUL SINGH, IAS
(COLLECTOR, SOUTH WEST)**