

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **O. Ref. No.1/2015**

% **20th September, 2018**

GAON SABHA NANAKHERI

..... Appellant

Through: Mr. S.S. Dalal, Advocate (M.
No.9212034938)

versus

SUCHETA MEMORIAL TRUST

..... Respondent

Through: Mr. Dinesh Dahiya, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This Original Reference under Section 113 of the Code of Civil Procedure, 1908 (CPC) is sent by the Deputy Commissioner/Collector (South West) whereby opinion of this Court has been sought as to whether construction of a boundary wall around agricultural land which is governed by the Delhi Land Reforms Act,1954 (hereinafter referred to as 'DLR Act') and Delhi Land

Reforms Rules, 1954 (hereinafter referred to as 'DLR Rules') is or is not a prohibited activity under the provision of Section 81 of the Delhi Land Reforms Act or in other words whether the agricultural and relative activities which are specified in Section 81 do not include the work of construction of a boundary wall around agricultural land.

2. In order to appreciate and decide the issue, this Court will have to examine the relevant provisions of the Delhi Land Reforms Act, Delhi Land Reforms Rules, Delhi Land Revenue Act, 1954 and Delhi Land Revenue Rules, 1962. Let us therefore reproduce the relevant applicable provisions of the aforesaid Acts and Rules:-

"Delhi Land Reforms Act, 1954

Section 3(12) "improvement" means with reference to a holding-

(i) a dwelling house erected on the holding by the tenure-holder for his own occupation or any other constructions erected or set up by him on the holding for purpose connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming;

(ii) any work which adds materially to the value of the holding and is consistent with the purposes aforesaid, which if not executed on the holding, is either executed directly for its benefit or is, after execution, made directly beneficial to it; and subject to the foregoing provisions of this clause, includes-

(a) the construction of wells, water channels and other works for the supply or distribution of water for the purposes aforesaid;

(b) the construction of works for the drainage of land or for the protection of land from floods or from erosion or other damage by water;

(c) the reclaiming, clearing, enclosing, leveling or terracing of land;

(d) the erection in the immediate vicinity of the holding otherwise than on the village site, of buildings required for the convenient or profitable use or occupation of the holding;

(e) the construction of tanks or other works for the storage of water for purposes aforesaid;

(f) the planting of trees and groves on the holding;

(g) the renewal or reconstruction of any of the foregoing works or such alternations therein or additions thereto, as are not of the nature of mere repairs:

Provided that such water channels, embankments, enclosures, temporary wells, or other works as are made by a tenure-holder in the ordinary course of his requirements for purposes aforesaid, shall not be deemed to be improvement:

[(12A) "*khudkhasi*" means land (other than *sir*) cultivated by a proprietor either by himself or by servants or by hired labour,-

(a) at the commencement of this Act, or

(b) at any time during the period of five years immediately before the commencement of this Act, whether or not it was so cultivated at such commencement, provided that it has not, at any time after having been so cultivated, been let out to a tenant];

Section 3(13) "land" except in Sections 23 and 24, means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming and includes-

(a) buildings appurtenant thereto,

(b) village abadis,

(c) grovelands,

(d) lands for village pasture or land covered by water and used for growing singharas and other produce or land in the bed of a river and used for casual or occasional cultivation,

but does not include-

[(2) Notwithstanding anything contained in sub-section (1), the Revenue Assistant also may, on receiving information or on his own motion, eject the *Bhumidhar* or *Asami*, as the case may be, and also recover the damages referred to in sub-section (1), after following such procedure as may be prescribed.

Delhi Land Reform Rules, 1954

Rule 19. Application for use of holding for industrial purposes (Section 23)-An application to the Deputy Commissioner by a Bhumidhar for the use of his holding or part thereof for industrial purposes shall, besides giving the particulars enumerated in Rule 20, also state the area, if any, that will be left with the applicant, for cultivation. This factor as also the genuineness of the need for the industrial undertaking shall be duly considered by the Deputy Commissioner in making his recommendations to the Chief Commissioner for the grant of permission, which as far as possible, shall not be accorded at the expense of agricultural interests of rural areas.

Rule 21A Use of land for non-agricultural purposes (Section 81)-The Patwari, as soon as he learns that the provisions of Section 23 have been violated and any land has been used for non-agricultural purposes, submit report to the Tahsildar mentioning therein:-

- (i) The name, parentage and address of the Bhumidhar or Asami;
- (ii) The number and area of the plots affected;
- (iii) The name of the village and circle;
- (iv) The use to which the land has been put;
- (v) The date of conversion of land for non-agricultural purposes; and
- (vi) Approximate amount of expense involved in making land capable of use for agricultural purposes before.

On receipt of the report from the Patwari or on receipt of information otherwise, the Tahsildar shall cause summary enquiry about the nature of the conversion of land and the approximate amount of expense involved in making the land capable of use for agricultural purposes as before, if it is possible. He shall then submit the papers to the Revenue Assistant for orders.

Rule 21-B. Disposal of reports by Revenue Assistant (Section 81)-The Revenue Assistant, on receipt of the report referred to in Rule 21-A or on receipt of information otherwise regarding user of land for non-agricultural purposes shall issue notice to the parties in L.R. Form 48 and shall call upon them to show cause why action should not be taken against them under Section 81.

To every such suit or proceedings Gaon Sabha shall be made a party.

After hearing the parties and after making such further enquiries as he thinks fit, the Revenue Assistant shall pass suitable orders thereon.

Delhi Land Revenue Act, 1954

Section 16. Maintenance of map and field-book- The Deputy Commissioner, shall, in accordance with rules made under Section 84, maintain a map and field-book of each village, and shall cause annually, or at such longer intervals as the Chief Commissioner may prescribe, to be recorded therein all changes in the boundaries of each village or field and shall correct any errors which are shown to have been made in such map or field-book.

Section 17. Obligations of Bhumidhars and Gaon Sabhas as to boundary marks- (1) It shall be the duty of every Bhumidhar to maintain and keep in repair at his own cost the permanent boundary marks lawfully erected on his fields.

(2) It shall be the duty of the Gaon Sabha to maintain and keep in repair at its own cost the permanent boundary marks lawfully erected on the village situate within its jurisdiction.

(3) The Deputy Commissioner may at any time order a Bhumidhar or a Gaon Sabha, as the case may be:-

- (a) to erect proper boundary marks on such fields or villages;
- (b) to repair or renew in such form and nature as may be prescribed all boundary marks lawfully erected thereon.

If such order is not complied with, within 30 days from the communication thereof, the Deputy Commissioner shall cause boundary marks to be erected, repaired or renewed and shall recover the charges incurred from the Bhumidhar or the Gaon Sabha concerned in such proportion as he thinks fit.

Section 18. Penalty for injury to, or removal of marks- The Deputy Commissioner may order any person found to be guilty before him of willfully erasing, removing or damaging a boundary or survey mark to pay such sum, not exceeding fifty rupees, for each mark so erased, removed or damaged as may be necessary to restore it, and to reward, if necessary, the person through whom the information was obtained. When such sum cannot be recovered, or if the offender cannot be discovered, the Deputy Commissioner shall restore the mark and recover the cost thereof from such of the Bhumidhars or Gaon Sabhas of co-terminus fields or villages, as the case may be, as he thinks fit.

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Section 28. Settlement of boundary disputes-(1) All disputes regarding boundaries shall be decided by the Deputy Commissioner, as far as possible, on the basis of existing survey maps, but if this is not possible, the boundaries shall be fixed on the basis of actual possession.

(2) If in the course of any inquiry into a dispute under this section, the Deputy Commissioner is unable to satisfy himself as to which party is in possession, or if it is shown that possession has been obtained by wrongful dispossession of the lawful occupants of the property within a period of three months previous to the commencement of the inquiry, the Deputy Commissioner, –

(a) In the first case, shall ascertain by summary inquiry who is the person best entitled to the property, and shall put such person in possession; and

(b) In the second case, shall put the person so dispossessed in possession and shall then fix the boundary accordingly.

Delhi Land Revenue Rules, 1962

Rule 380. Statutory duty of Revenue Assistant- It will be the duty of the Revenue Assistant to see that boundary and survey marks are properly maintained.

Rule 381. Boundary marks-The term ‘Boundary marks’ shall include every permanent mark erected on the boundary of a village or field whether in connection with a survey or to define a disputed boundary.

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Rule 383. Classes of boundary marks-Permanent boundary marks shall be of the following classes:-

(i) Tri-junction marks of masonry or stone.

- (ii) Other boundary marks of masonry or stone.
- (iii) Other boundary marks consisting of a mound of earth or loose stone enclosing a permanent mark (such as baked clay cylinder or a lump of charcoal).

Rule 384. Tri-junction marks- Tri-junction marks which require replacement shall be replaced by stone pillars of the standard pattern as shown in the following sketch. Marks requiring repairs shall be carefully repaired in such manner as may be required.

Standard Pattern of Tri-Junction

Dressed

Rough Specifications

Top measurement	...	8x8 inch.
Base measurement	...	14x14 inch.
Length of side	...	36 inch.

(One-third dressed, rest un-dressed)

Rule 385. Boundary marks of class(ii)-Other boundary marks of stone or masonry which require replacement shall be replaced by the stone pillars. No standard pattern for such marks has been (prescribed; but the stone used may conveniently be of the pattern prescribed) for tri-junctions, the cross out on the top being replaced by some other distinctive mark. Repair shall be effected in such manner as may be required.

Rule 386. Boundary marks of class (iii)-The third class of boundary marks shall be maintained by keeping the heap of earth or stones to its original size; the mound shall not be opened to ascertain whether the enclosed permanent mark is still in existence. When a mark of this class has altogether disappeared no steps shall be taken to replace it.”

3. The lands which are the subject matter of the DLR Act are those lands which fall within the definition of ‘land’ contained in Section 3(13), and such lands include all types of lands in a village or

rural area. Land in a village or rural area will have lands which are used for agricultural purposes and connected purposes, even abadi lands, lal dora lands which are used for industrial purposes, village pasture lands, gair mumkin pahari land etc. Therefore, it is not as if the land which is comprised in village or rural area only will mean agricultural land or that the DLR Act only applies to agricultural land. DLR Act applies to rural areas or village areas which fall within the jurisdiction of the DLR Act.

4. That the lands in a rural area or village area which is the subject matter of jurisdiction under the DLR Act also includes lands which are used for non-agricultural purposes becomes clear not only from the definition of 'land' which will include abadi lands, but the same is also further made clear by the definition of the word 'improvement' as found under Section 3(12) of the DLR Act. Improvement has been defined to include a dwelling house or other constructions for the purposes connected with agricultural and related activities, well, water channels, tanks and so on. Therefore, the irrefutable conclusion is that the lands which are the subject matter of the DLR Act will include all types of lands in a rural area or village

i.e. an area which is not urbanized, either because of notification under Section 507 of the Delhi Municipal Corporation Act, 1957 or that area which becomes a developed area for non-agricultural purposes because of being included in a developed area under Section 12 of the Delhi Development Act, 1957 vide *Shri Neelpadmaya Consumer Products Pvt. Ltd. v. Satyabir and Ors. 227 (2016) DLT 654*.

5. Section 22 of the DLR Act prescribes the entitlement of the *bhumidhar*/owner of the land under the DLR Act to use his land as a *bhumidhar*. The land which is used by a *bhumidhar* will include the use of the land for agricultural purposes or related activities of horticulture or animal husbandry or pisciculture or poultry farming. Use of land under Section 22 of the DLR Act also includes the entitlement to make improvements to such land by the *bhumidhar*. The meaning of improvement has already been discussed above, with reference to Section 3(12) of the DLR Act, for an entitlement to make a building or permanent construction. Therefore, the *bhumidhar* of the land is entitled to use his land not only for agricultural purposes, but also for making any improvement/construction thereon, and this

construction has to be of the type as specified in Section 3(12) of the DLR Act.

6. Section 81 of the DLR Act provides that in case the land is not used for agricultural purposes or related purposes of horticulture or animal husbandry or pisciculture or poultry farming, then in such a case under Section 81, the *bhumidhar* or *asami* (a tenant under the *bhumidhar*) is liable to ejection on a suit filed by *Gaon Sabha* or a land holder or a Revenue Assistant. Section 81 in a way does seem to suggest that land under the DLR Act can only be used for the purposes of agriculture or horticulture or animal husbandry or pisciculture or poultry farming, however, it is seen that Section 81, though it does not say so, deals with only certain types of lands and not all types of lands under the DLR Act. The subject matter of Section 81 of the DLR Act are only those lands which as per the provisions of the DLR Act have to be used for the purposes of agriculture or horticulture or animal husbandry or pisciculture or poultry farming, i.e. it does not include certain other lands including lands which are used as *abadi* or for industrial purposes as a *lal dora* land and provision for which is made under Section 23 of the DLR Act. Therefore, on the one hand,

Sections 22 and 23 provide for user of the land for non-agricultural purposes including and making construction thereon, but Section 81 on a literal interpretation may seem to suggest that all lands under the DLR Act can only be used for agriculture or horticulture or animal husbandry or pisciculture or poultry farming, though in reality it is not so because if Section 81 is interpreted literally, the same will quite clearly be in conflict with the other provisions of the DLR Act, including Sections 3(12), 22 and 23. It is therefore held that lands which are the subject matter of Section 81 of the DLR Act are only lands which as per DLR Act can only be used for agriculture and related purposes as specified in Section 81. Thus, the issue with respect to any re-entry/possession of land by a suit by Gaon Sabha/land holder or Revenue Assistant as prescribed in Section 81 of the Delhi Land Reforms Act will arise only with respect to lands which are subject matter of Section 81 of the DLR Act i.e. those lands which are used for agriculture and other related purposes as specified in Section 81 of the DLR Act, and no other land.

7. Therefore, now let us examine the issue which is referred to this Court under Section 113 CPC as to whether a boundary wall

can be constructed/made on those lands which are subject matter of Section 81 of the DLR Act vis-à-vis the lands which are used for agriculture and related purposes as specified in Section 81.

8. The term 'boundary' or 'boundary wall' is not defined either under the DLR Act and the Rules framed thereunder or under the Delhi Land Revenue Act and the Rules framed thereunder. There is however a reference to boundaries under the Delhi Land Revenue Act and Delhi Land Revenue Rules, and the relevant provisions have also been also reproduced above. The object of a boundary mark is to demarcate the land of a land owner/*bhumidhar/asami* etc. from the other lands. The boundary marks are, therefore, permanent marks for demarcating the lands. A reference to the relevant Rules vis-à-vis Rule 381 onwards of the Delhi Land Revenue Rules, or for that matter, any other provisions of the DLR Act or its Rules or Delhi Land Revenue Act, do not show any prohibition against the construction of a boundary wall. However, what is specified is the construction of permanent boundary marks. The provision of construction on boundary marks does not and cannot be said to prohibit construction of a boundary wall. There is nothing in the DLR Act and Rules or

Delhi Land Revenue Act and Rules which expressly or impliedly prohibit construction of the boundary wall around lands which are subject matter of Section 81 of the DLR Act. The type of boundary marks, are those as specified in Rule 383, and this Rule only specifies the types of the boundary marks, but these relevant Rules alongwith the related Rules 384 to 386, do not in any manner, prohibit the construction of boundary walls with or on the boundary marks. Surely therefore, any land owner or land holder covered under Section 81, is entitled to construct a boundary wall on his own land, and this boundary wall will however be made in such a way that the permanent boundary marks which are made for demarcation will not be effaced or removed but will continue to be clearly shown, though, maybe along-with being a part of the boundary wall around a land of a land holder falling under Section 81.

9. I may note that the reference order of the Deputy Commissioner makes reference to an order dated 18.04.2012 in the case titled as ***Babita Agarwal and Anr. v. Govt.of NCT of Delhi and Anr.*** in ***W.P.(C) No.875/2012***, however, it is seen that the order dated 18.04.2012 is just an order and not a judgment giving reasons and

discussion as to whether or not a boundary wall can or cannot be constructed on agricultural lands or lands for related purposes falling under Section 81 of the DLR Act. Therefore, the order dated 18.04.2012 in *W.P.(C) No.875/2012* in no manner can be held to determine the issue as to whether a boundary wall can or cannot be constructed around the lands, which are subject matter of Section 81 of the DLR Act.

10. At this stage, this Court would like to state that though no height of the boundary wall is prescribed or specified as per the DLR Act or its Rules, or Delhi Land Revenue Act or its Rules, since however, inspections have to take place of the agricultural lands and those lands which are subject matter of Section 81 of the DLR Act, twice a year for making *khasra girdwari*, or otherwise also to ensure that provisions of the DLR Act and Rules or Delhi Land Revenue Act and Rules are complied with, it is ordered that a wall which is constructed for bounding the land of a land holder, under the DLR Act, should not exceed 5 feet in height, and this observation is being made specifically restricted to those lands which are used for the purposes as specified in Section 81 of the DLR Act.

11. In view of the aforesaid discussion, the Reference is answered by holding that, there is no express or implied bar either under the DLR Act and Rules or under the Delhi Land Revenue Act and Rules, for a land holder of those lands which are subject matter of Section 81 of the DLR Act, to construct a boundary wall around his land, and such boundary wall can be constructed on the land by the land holder, with the clarification that the height of the boundary wall will not exceed 5 feet in height. Reference is accordingly answered and now parties will appear before the Deputy Commissioner/Collector (South West) Delhi on 30th October, 2018. The Original Reference file be sent back to the concerned Deputy Collector after retaining a copy of the file O. Ref. No.1/15 in this Court alongwith copy of today's judgment.

SEPTEMBER 20, 2018
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VALMIKI J. MEHTA, J