



IN THE COURT OF COLLECTOR/ DISTRICT MAGISTRATE  
DISTRICT: SOUTH - WEST

OLD TERMINAL TAX BUILDING, KAPASHERA, NEW DELHI -110037.

Ref. No. 2775  
APPEAL No. 14/2016

Dated: 03-7-18

Sardar Singh ..... Appellants

Vs.

Gaon Sabha Kapashera ..... Respondent

**ORDER**

1. This order shall dispose the Appeal no. 14/2016 titled as above, filed against the order dated 02.03.2016 in Case no. 11/RA/2012 by SDM / Revenue Assistant (Kapashera) u/s 81 of DLR Act, 1954. The suit land comprises Khasra no. 34//9/2 (4-11), 10/1(0-15) situated in the revenue estate of Village Kapashera. Vide the impugned order, the suit land was vested in the Gaon Sabha and the recorded bhumidhar was ejected.

**2. Facts of the Case:-**

The Revenue functionaries of the Kapashera Sub-Division vide report dated 05.01.12 submitted that New Cars were found standing/parked in agricultural land bearing Khasra Nos. 34//9/2 (4-11), 10/1(0-15) and that the agricultural land was being used for Non-Agricultural activities.

Based on the above report, Case u/s 81 of the DLR Act, 1954 was registered and proceeding of the case continued. The SDM/RA (Kapashera) vide order dated 02.03.16 observed: -

*The non-agricultural use in Khasra No. 34//9/2(4-11) is still continued and it is being used for commercial purpose in the form of parking of vehicles.*

*This is being done by the respondent inspite of the conditional order dated 25.06.2012 issued to him. Since the said conditional order has not been complied with by the respondent, the court has no option but to remove the vehicles from there. This appears to be dodging techniques being followed by the respondent since use like parking is such that it can be removed any time and can be restarted again. If the respondent were so law abiding citizen, he would have followed the compliance of conditional order and duly reported the compliance to the RA which he has failed to do.*

*Hence, there is no merit finds in the argument of the respondent and hereby the RA/SDM vest the land comprise in Khasra No. 34//9/2(4-11), 10/1(0-15) situated in the revenue estate of village Kapashera.*

**Based on the above observations, the SDM/RA (Kapashera) directed that:-**

*Accordingly, the respondent Sh. Sardar Singh ejected from the Suit land. He however continue to enjoy the possession of the land bearing Khasra Nos. 34//8/1 (2-8), 8/2(0-6) which has been converted back to the agriculture use as directed in the conditional order as per the report of Halka Patwari dated 01.03.2015.*

  
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**3. Grounds of the Appeal:**

The appellant has submitted the following points in his defense:-

- a) That the Ld. Trial Court has not considered the limitation provided for initiation of proceeding under section 81 of DLR Act.
- b) That the tin shed and boundary wall constructed on the land in question are constructed in the year 1991 and such, the proceeding, in respect of the tin sheds and boundary wall is barred by time.
- c) That the Ld. SDM /RA passed the impugned orders only upon the report of Halqa Patwari, which is false and frivolous based on surmises.

**4. Written statement of the respondent (Gaon Sabha, Kapashera):-**

The Gaon Sabha Kapashera in it's written statement, presented the following points:-

- a) That the land in dispute bearing Khasra No. 34/9/2(4-11), 10/1(0-5) situated within the revenue estate of village Kapashera vide the above said impugned order and the appellant is no more the bhumidar of the abovesaid land. It is submitted that as far as use of the land in concerned it proved on record that the appellant failed to bring back the land in dispute within the stipulated period of three months is of passing of the conditional order by the SDM/RA Kapashera. It is submitted that the report of the Halqa Patwari regarding the compliance of the conditional order and the impugned order which is self-explanatory, the appellant continued to use the land for non-agriculture /commercial purpose.
- b) That the appellant continued to use of the land for non-agriculture/commercial purpose during the trial of the case and inspite of the conditional order passed by the Ld. Lower Court.
- c) That the appellant was very well aware of the conditional order passed by the SDM/RA and he intentionally and deliberately continued to use the land for non-agriculture purposes as reflected in the impugned order as on record.
- d) That inspite of the direction of the SDM/RA the appellant failed to bring back the land in dispute into Agriculture use within the stipulated period as enumerated in the DLR Act.

**5. Findings/Observations:-**

It may be observed that a Restrain Order under section 81 of the DLR Act, 1954 was issued by the SDM/RA on 10.01.12, on account of the agricultural land being used for non-agricultural purposes. Thereafter subsequent reports of the suit land were sought by the Ld. SDM/RA (Kapashera) to ascertain whether the unauthorized activity/non-permissible use of land was stopped by the recorded owner or not. As per the report of the Field Kanungo dated 06.03.2013, it was reported that while the Khasra Nos.34//10/1 (0-15) is vacant and used for private passage, Khasra No. 34/9/2(4-11) was being used for parking of vehicles.

Thereafter, another report was sought from the field functionaries, the Halqa Patwari vide report dated 01.03.2016 submitted that; - The suit land bearing Khasra No. 34//9/2(4-11), still being used for parking of private vehicles while Khasra No. 10/1(0-15) was being used as private passage.

**6. Decision:-**

From the facts of the case, it is clear that the appellant had been using the suit land for non-agricultural purposes in the form of parking of the vehicles, which is a non permissible commercial use of the suit land and thus a violation of the provision of the DLR Act, 1954.

This violation was reported in the year 2012 and existed on the date of passage of impugned order 02.03.2016.

The appellant in his appeal has merely made some conjectures and assertions and has not provided / not been able to produce any concrete evidence of complying with the requirements stipulated u/s 82(2) of the DLR Act, 1954. The Ld. Court of SDM/RA in the impugned orders had rightly observed that the actions of the recorded owner appears to be "dodging techniques". Due to the above findings and the facts of the case, the undersigned does not find any justifiable reason to interfere with the impugned orders of the SDM/RA, Kapashera, dated 02.03.2016 and hereby dismiss the appeal being devoid of merits.

The SDM (Kapashera) and the BDO (SW) to proceed further in the matter for the taking over of the suit land as per the procedure prescribed in the Act and the Rules thereunder, without any further delay.

7. Given under my hand and seal on this 3<sup>rd</sup> day of July, 2018.

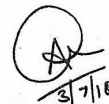


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(ABHISHEK DEV, IAS)  
DISTRICT MAGISTRATE  
SOUTH WEST DISTRICT  
DELHI-110037

Copy:

1. Divisional Commissioner, 5 Sham Nath Marg, Delhi.
2. SDM / RA (Kapashera)
3. Parties concerned.
4. System Analyst (SW).
5. Guard File.



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(ABHISHEK DEV, IAS)  
DISTRICT MAGISTRATE  
SOUTH WEST DISTRICT  
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