

PETITIONER:
SHRI KANWAR PAL & ORS.

Vs.

RESPONDENT:
GAON SABHA KIRARI & ORS.

DATE OF JUDGMENT: 06/08/1996

BENCH:
M.M.PUNCHHI, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

The Gaon Sabha, Kirari Suleman Nagar, a village situated within the State of Delhi, moved the Revenue Assistant/Sub-Divisional Magistrate, Delhi, complaining conversion of some lands to non-agricultural use in contravention of the provisions of Section 81 of the Delhi Land Reforms Act, 1954. The respondent arrayed therein was one Narender Singh. It seems that the said respondent was directed vide order dated 10.10.1985 to convert the said lands back to agricultural use within three months, failing which he would be ejected from the said land and his rights thus on the land would get extinguished vesting the same in the Gaon Sabha. It was reported to the Sub-Divisional Magistrate by the Patwari through the Tehsildar that the suit land had not been converted to agricultural use by the respondent despite notice. This led to the action of vesting of the land in the Gaon Sabha.

The appellants herein claimed to be in individual possession of the land involved in such vesting. They moved the Financial Commissioners Delhi Administration in revision, not only on the merit of the matter, but otherwise complaining that the Revenue Assistant had passed orders dated 10.10.1985 in the first instance and then finally on August 20, 1986 without giving them an opportunity of being heard. The Financial Commissioner vide order dated 19.1.1989 rejected the revision petition holding that notice to one co-sharer was notice to all, leaving alone the matter on its merit. It transpired that Narender Singh to whom the notice had been issued had died in that interregnum. It was concluded by the Financial Commissioner that the assertion of the appellants that they could not know of the proceedings was not believable since those had continued since 1984 to 1985 and the assertion that the deceased did not tell them about the pendency of proceedings was unconvincing. The High Court when approached in proceedings under Articles 226 and 227 of the Constitution, agreed with the Financial Commissioner in holding that notice on a co-sharer was good service on the other co-sharers. This order of the High Court is the subject-matter of challenge in this appeal.

As an abstract proposition, it cannot be disputed that a co-sharer is in possession of land not only on his but on behalf of the other co-sharers too and a notice served on him would be notice on other co-sharers. It seems to us that the said proposition would not be applicable instantly when the case of the appellants is that they were in individual possession of lands as reflective from the Khataunis of the relevant year. As is evident, drastic are the consequences if agricultural land is put to non-agricultural use. One co-sharer cannot be permitted to hold the other co-sharers to ransom by misusing the portion in his possession. His interest obviously would be hostile to the other co-sharers and vice-versa. Thus, in our view, the proposition aforementioned as employed by the Financial Commissioner as well as the High Court was totally misplaced in the facts and circumstances. A notice was essential to be issued individually to all the appellants before any action was sought to be taken under the aforementioned provisions of law.

Additionally, we find from the orders of the Sub-Divisional Magistrate that notice was issued to Narender Singh individually and not as a representative of his other co-sharers. His ejectment was considered enough to be ejectment of all. That is not a correct way of looking into the matter in the case of individual user personal to each occupant.

We, therefore, are of the view that injustice has been done to the appellants. We therefore set aside all the orders of the authorities below as well as that of the High Court, leaving it open to the revenue authorities to take de novo proceedings against each and every co-sharer separately in possession, if cause for proceedings exists at the moment. The appeal is thus allowed in these terms. No costs.