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

% *Date of Decision : December 17, 2009*

+ **LPA 346/2004**

RAJ KUMAR Appellant
Through: Mr.Ramesh Chandra, Senior
Advocate with Ms.Geeta Mehrotra
and Mrs.R.Ratnam Nagar,
Advocates.

versus

FINANCIAL COMMISSIONER & ORS. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J. (Oral)

1. Land admeasuring 1 bigha and 2 biswa situated in Khasra No.15/1 in the revenue estate of Village Shahbad Daulatpur, Delhi was under the bhumidari of one Jabar Singh. He sold the said land to Vinod Chopra on 25.6.1988 whose general attorney, in turn, sold the land to the appellant on

5.3.1992 by and under a registered sale deed.

2. Having purchased the land, the appellant applied to the Revenue Authorities i.e. the Tehsildar for the land to be mutated in his name in the revenue records. Vide mutation order dated 16.7.1993 the land was mutated in the name of the appellant. But, prior thereto, on 17.1.1992, with reference to a show-cause notice issued in the name of the previous recorded owner, a conditional order under Section 81 of the Delhi Land Reforms Act 1954 was passed by the Revenue Assistant.

3. Holding that the land required to be used for an agricultural purpose was being misused, it was directed, vide order 17.1.1992, that if within 3 months land use was not restored for the purpose prescribed as per law the same would be liable to be vested in the gaon sabha.

4. Thereafter, on 28.9.1995 a vesting order was passed holding that since the land use was not reverted to the permissible land use, the land stood vested in the gaon sabha.

5. When sought to be executed in the year 2000, the appellant filed an application on 7.7.2000 under Appendix VI Rule 14 of the Delhi Land Reforms Rules 1954 stating that the vesting order dated 28.9.1995 was passed without any notice to him and hence should be recalled.

6. The said application was dismissed by the Revenue

Assistant on 21.8.2000 holding that since a conditional order for ejectment had been passed on 17.1.1992 after serving the then recorded owner and the appellant having purchased the land subsequent to said date, it could not be claimed by the appellant that no notice had been served.

7. The appellant filed a Revision Petition before the Financial Commissioner challenging the order dated 21.8.2000 passed by the Revenue Assistant stating that the appellant was laying a challenge to the vesting order dated 28.9.1995 which was passed without any show-cause notice being served upon the appellant.

8. The Revisional Authority i.e. the Financial Commissioner dismissed the Revision Petition vide order dated 30.10.2000 holding that before the conditional vesting order was passed, the recorded bhumidar of the land was served. It was further held that having got the land mutated in his favour in the year 1993, it was not explained as to how after a gap of 5 years, the vesting order dated 28.9.1995 was challenged when the application was filed before the Revenue Assistant on 7.7.2000.

9. The appellant challenged the order passed by the Financial Commissioner by and under WP(C) No.835/2001 which has been dismissed by the learned Single Judge holding

as under:-

"The only contention raised before the Revenue Assistant was that the vesting order has come into being in the year 1995 despite the transfer in the name of the petitioner in pursuance to the sale deed of 1992 recorded by the entry in the khatauni of 20.09.1993. The Revenue Assistant, however, found that the order had been passed on 17.01.1992 prior to the entry in favour of the petitioner and the order of vesting was a consequence of the earlier order dated 17.01.1992. Since the recorded owner Jabbar Singh was served, the occasion to serve the petitioner did not arise.

This is the same reasoning which has weighed with the Financial Commissioner when the petitioner filed the revision petition.

Learned counsel for the petitioner today sought to contend that prior to the transfer being recorded in favour of the petitioner in 1993, there was an intervening sale in favour of Shri Vinod Chopra which was recorded prior to the order of 17.01.1992. Learned counsel for the petitioner was specifically asked to show as to where such a plea was raised before the Revenue Assistant or before the Financial Commissioner. There is no answer to this query. A reading of both the orders show that there is no such plea raised. In para (3) of the order of the Financial Commissioner what is recorded is that the petitioner purchased the land from Shri Vinod Chopra who had in turn purchased the land from Jabar Singh. Shri Jabar Singh was the lone recorded bhoomidar to whom admittedly notice has been given by the Revenue Assistant before passing the conditional order on 17.01.1992.

In my considered view, in order to raise the plea about non-service of notice on Shri Vinod Chopra, this matter should have been agitated before the forums below showing the mutation in the name of Shri Vinod Chopra and the non service on Shri Vinod Chopra coupled with the affidavit of Shri Vinod Chopra for non-receipt of the said notice. The petitioner cannot now be permitted to raise this fresh plea which has not been raised before the Revenue Assistant or before the Financial Commissioner."

10. We have perused the application filed by the appellant before the Revenue Assistant on 7.7.2000 challenging the order dated 28.9.1995 as also the Revision Petition filed before the Revenue Assistant.

11. We find that the appellant has categorically raised a plea that pursuant to the sale deed dated 5.3.1992 land was mutated in his name vide mutation order dated 16.7.1993. The appellant questioned the vesting order dated 28.9.1995 urging that before the same could be passed he was required to be served with a show-cause notice.

12. We further note that with respect to the conditional vesting order dated 17.1.1992 the appellant urged that having sanctioned mutation in his name on 16.7.1993 the revenue authorities could not predicate any right under the conditional vesting order dated 17.1.1992.

13. As regards the delay, the appellant has specifically pleaded that he learnt about the order dated 28.9.1995 only when the same was attempted to be executed.

14. We note that the revenue authorities have not bothered to consider whether the order dated 28.9.1995 was served upon the appellant, who by virtue of the mutation dated 16.7.1993 was shown as the recorded bhumidar of the land. Thus, the claim of the appellant with respect to the bar of delay required to be considered with reference to the

vesting order being served and if not served, to consider whether knowledge was gained by the appellant when the vesting order was sought to be executed.

15. Further, it had to be considered whether the vesting order dated 28.9.1995 was legal and valid for the reason the appellant was never served with a prior notice before the order was passed; he having been shown as the recorded bhumidar of the land when mutation was effected in his favour on 16.7.1993.

16. We allow the appeal and set aside the impugned order dated 8.1.2004. WP(C) No.835/2001 filed by the appellant stands allowed. Order dated 30.10.2000 passed by the Financial Commissioner dismissing Case No.273/2000-CA is set aside. The Revision Petition i.e. Case No.273/2000-CA is restored for fresh adjudication in accordance with law.

17. We direct the Financial Commissioner to re-decide the Revision Petition and while so doing to take note of the facts noted herein above by us.

18. Needless to state, on revival of the proceedings, the Financial Commissioner shall serve the respondents.

19. The appellant is directed to appear before the learned Financial Commissioner on 22.2.2010 and is further directed that on or before 1.2.2010 under cover of an application, certified copy of the present order would be filed

in the office of the learned Financial Commissioner so that the Reader of the learned Financial Commissioner can trace out the file of Case No.273/2000-CA and list the same before the learned Financial Commissioner on 22.2.2010.

20. No costs.

21. Copy of this order be supplied dasti to learned counsel for the appellant.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J

DECEMBER 17, 2009
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