

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

Date of decision: 17th January, 2011.

+ W.P.(C) 4448/2002

% SMT. VIDYAWATI & ORS. Petitioners
Through: Mr. B.S. Maan with Ms. Smita Maan
& Mr. Jitin Tewathia, Advocates.

Versus

FINANCIAL COMMISSIONER, DELHI & ANR. .. Respondents
Through: Ms. Sujata Kashyap, Adv. for R-1.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

RAJIV SAHAI ENDLAW, J.

1. The writ petition impugns the order dated 28th March, 2002 of the Financial Commissioner dismissing the second appeals filed by each of the three petitioners under Section 66 of the Delhi Land Revenue (DLR) Act, 1954 against the common order dated 13th August, 2001 of the Collector.
2. The factual matrix as emerges is that the respondent no.2 Mr. Tri Bhawan Gopal had purchased land admeasuring 1 Bigha, 1 Biswas bearing Khasra No.1081 min situated in Village-Milak Pur Kohi @ Rangpuri, Tehsil-Mehrauli, New Delhi vide registered Sale Deed dated 26th June, 1982. The said land was also mutated in his favour on 30th June, 1983.

3. It is the case of the petitioners that the respondent no.2 vide registered Sale Deed dated 7th September, 1982 sold the land to the petitioner no.1; that the petitioner no.1 thereafter in the year 1991 sold the land to the petitioner no.2 Sh. Jai Parkash Sharma and the petitioner no.2 thereafter in the year 1991 itself sold the land to the petitioner no.3 M/s. O.TC. Fibers. It is further the claim of the petitioners that on the basis of the said Sale Deeds, the land was mutated ultimately in the name of the petitioner no.3 by Halqa Patwari on 29th October, 1991.

4. The respondent no.2 in the year 1998 preferred three appeals to the Collector against the mutation in the name of each of the three petitioners. The said three appeals were decided by the Collector vide common order dated 13th August, 2001. The respondent no.2 had denied his signatures on the Sale Deed in favour of the petitioner no.1 and had also denied receiving any sale consideration from the petitioner no.1. It was his case that he was in possession of the land which was also recorded in his name till the year 1997 and while getting the entry made in the year 1997, he realized that the mutation had been effected in the name of the petitioners successively.

5. The Collector allowed the appeals aforesaid finding various suspicious circumstances. It was found that the demand draft for payment of sale consideration was not got prepared by the petitioner no.1 but by somebody else; that for mutation from the name of respondent no.2 to the name of petitioner no.1, one Mr. Atul Sharma has appeared as Mukhtiar of the respondent no.2 but there was no document of Mukhtiarship on record; it

was also found that the same person had appeared as the attorney of the petitioner no.1, petitioner no.2 and petitioner no.3. Yet another suspicious circumstance noticed was that though sale by respondent no.2 to petitioner no.1 was of the year 1982 but mutation in favour of petitioner no.1 also was effected on 10th July, 1991. In the light of the said suspicious circumstances, the mutation in favour of the petitioners was ordered to be cancelled and First Information Report (FIR) also ordered to be lodged.

6. The petitioners as aforesaid preferred appeals to the Financial Commissioner but which have been dismissed by merely observing that the order of the Collector is detailed and reasoned and did not require any interference.

7. Notice of this writ petition was issued. The respondent no.2 has filed a counter affidavit claiming to be in possession and reiterating the facts as found in his favour by the Collector. Rejoinder thereto has been filed by the petitioners with the petitioner no.3 claiming to be in possession.

8. Rule was issued on 4th February, 2004. None has been appearing for the respondent no.2 thereafter. On 4th March, 2010 the writ petition was disposed of observing that since the findings of the Revenue Authorities are *prima facie* in nature, they will not constitute *res judicata* in civil proceeding which may go into the merits. The petitioners thereafter applied for review and which was allowed on 20th August, 2010 and the order disposing of the writ petition recalled. None has been appearing for the respondent no.2 thereafter also.

9. The counsel for the petitioners and the counsel for the respondent no.1 have been heard.

10. The sole contention of the counsel for the petitioners is that the findings of title could not be returned, as has been done, in the proceedings for mutation and which are summary proceedings and without recording evidence. Reliance is placed on para 7 of the judgment dated 29th February, 2008 of the Division Bench of this Court in FAO(OS) No.406/2007 titled ***Ram Niwas Vs. Pitamber Singh*** (2008) 102 DRJ 181 wherein, in fact the judgment of the Apex Court in ***Hatti Vs. Sunder Singh*** 1970 (2) SCC 841 was quoted. On the basis thereof it is contended that whenever a question of title is raised before the Revenue Courts, that question has to be referred by the Revenue Assistant to the Civil Court. The counsel for the petitioners has contended that in a summary and casual manner, finding of the Sale Deeds in favour of the petitioners being forged having serious repercussions has been given. It is contended that if the Collector entertained any doubt as to the genuineness of sale transaction between the respondent no.2 and the petitioner no.1, he ought to have referred the same for adjudication to the Civil Court. Relief only to the said extent is claimed in this writ petition.

11. Section 186 of the Delhi Land Reforms Act, 1954 by which the land is governed is as under:-

“186. Procedure when question of title is raised

(1) Notwithstanding anything contained in section 185, if in any suit or proceedings mentioned in column 3 of Schedule I, question is raised regarding the title of any party to the land which is the subject matter of the suit or proceeding and such

question is directly and substantially in issue the Court shall, unless the question has already been decided by a competent court, frame an issue on the question of the title and submit the record to the competent Civil court for the decision of that issue only.

Explanation - A plea regarding the title to the land which is clearly untenable and intended solely to oust the jurisdiction of the revenue court shall not be deemed to raise a question regarding the title to the land within the meaning of this section.

(2) The Civil court, after reframing the issue, if necessary, shall decide such issue only and return the record together with its finding thereon to the revenue court which submitted it.

(3) The revenue court shall then proceed to decide the suit, accepting the finding of the Civil court on the issue referred to it.

(4) An appeal from a decree of a revenue court in a suit or proceeding in which an issue regarding title has been decided by a Civil court under sub-section (2) shall lie to the Civil court which having regard to the valuation of the suit has jurisdiction to hear appeal from the Court to which the issue of title has been referred.”

12. Reading of the aforesaid shows that though the same is “notwithstanding” Section 185 which vests exclusive jurisdiction in the Revenue Courts in the matters specified therein but it mandates by use of the expression “shall”, the Revenue Court before which a question as to title of any property is raised, to refer the same to the competent Civil Court unless the same has already been decided by a Civil Court. The explanation clarifies that where the plea of title though raised is untenable, no such reference need be made. The Supreme Court in *Vidya Devi Vs. Prem Prakash* (1995) 4 SCC 496 held that if the question of title raised in any suit

or proceeding indicated in the Schedule to the Delhi Land Reforms Act, 1954, is directly and substantially in issue, the Revenue Court has no option except to frame an issue on the question of title and submit the record to the competent Civil Court for decision on that issue only. It was further held that if the Revenue Court finds that the question of title is not raised *bona fide* and the intention is only to oust the jurisdiction of the Revenue Court, the question of title shall not be deemed to have been raised. It was further held that the decision whether a question of title arises or not depends on the nature of the pleadings.

13. Undoubtedly, the Collector as well as the Financial Commissioner have failed to notice the aforesaid provisions. The Collector has proceeded to return findings without recording any evidence as to the genuineness of the Sale Deed. Undoubtedly, certain suspicious circumstances have been noticed but the same cannot be said to be such which would make the question of title raised, untenable. The fact remains that a registered Sale Deed exists and there is no finding from any Civil Court of competent jurisdiction till now as to its invalidity.

14. The counsel for the respondent no.1 has referred to ***Kamla Prasad Vs. Sri Krishna Kant Pathak*** 2007 (4) SCC 213 but the same is on the aspect of the exclusive jurisdiction of the Revenue Courts with respect to the matters for which jurisdiction is vested in them and the exclusion of the jurisdiction of the Civil Court and does not deal with the question of reference.

15. The Financial Commissioner unfortunately has also not considered

the aforesaid aspect. On enquiry, the counsel for the petitioners informs that though an FIR pursuant to the order of the Collector was lodged about 15 years ago but no challan has been filed till date. It is informed that the respondent no.2 is untraceable.

16. I am of the view that the finding as to genuineness or otherwise of the Sale Deed ought not to be returned in the manner as has been done by the Collector. The Collector ought to have followed the procedure prescribed in Section 186 of the Delhi Land Reforms Act.

17. The writ petition therefore succeeds; the order of the Financial Commissioner and the order of the Collector, are set aside and the matter remanded to the Collector to hear the parties and to decide as to whether a reference under Section 186 of the DLR Act is required to be made or not and if holds the said reference to be required, to refer the parties to the Civil Court.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

17th January, 2011
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