

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Order Reserved on: November 15, 2011
Order Pronounced on: November 28, 2011

+ W.P.(C) No.18884/2006

OM PRAKASH & ORS. Petitioners
Through: Mr. S.B. Upadhyay, Senior Advocate with
Ms. Anish Upadhyay, Advocate

versus

FINANCIAL COMMISSIONER & ORS. Respondents
Through: Mr. Santosh K. Mishra, Advocate for Mr. Vivek
K.Tondon, Advocate for R-1 & R-2.

Mr. B.S. Mann and Mr. Jitin Tewathia, Advocates
for R-3 to R-8.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

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

SUNIL GAUR, J.

1. Though this case is one of grant or refusal of mutation, but in fact it is based upon the succession to the *bhumidari* rights of deceased- Laxman Singh, in the agricultural land measuring 77 *bighas* and 13 *biswas*, in Village- Tikri Kalan, Delhi and the particulars of its *khata khatoni* numbers finds mention in the application for mutation (Annexure P-3), filed by the petitioners.

2. The parties in this petition are the maternal grandsons of *bhumidar* Laxman Singh, who had died on 31st August, 1986. As per petitioners, late Sh. Laxman Singh had left behind a Will of 20th August, 1986, bequeathing the subject land in favour of the petitioners, who on the strength of the aforesaid Will had sought mutation of the subject land in their favour on 12th September, 1986 by filing an application (Annexure P-3) before the concerned *Tehsildar*. Respondents herein had filed their objections (Annexure P-4) to the petitioners' application (Annexure P-3).

3. While overruling the objections of the respondents vide order of 18th June, 2003, the Revenue Assistant had directed the concerned *Tehsildar* to mutate the subject land equally in favour of the petitioners by accepting the registered Will (EX. PW-1/1) as a genuine document upon finding nothing suspicious about it.

4. In appeal, the concerned Deputy Commissioner vide order of 26th July, 2004 (Annexure P-10) had upset the order of 18th June, 2003 (Annexure P-9) of the Revenue Assistant and had remanded this matter to the concerned Revenue Assistant with direction to get the genuineness and the validity of the Will in question judged by a Civil Court of competent jurisdiction.

5. Petitioners had preferred a second appeal which has been dismissed by the Financial Commissioner, Delhi vide impugned order of 31st August, 2006.

6. The thrust of the submissions of Mr. S.B. Upadhyay, learned senior counsel for the petitioners in assailing the impugned order is towards the resort to the Delhi Land Reforms Act, 1954 by the Deputy Commissioner and the Financial Commissioner being

unwarranted, as it is submitted that the Delhi Land Revenue Act, 1954 is a self contained code which excludes the jurisdiction of the Civil Court and therefore, the question of grant or refusal of mutation has to be considered within the parameters of the Delhi Land Revenue Act alone. According to learned senior counsel for petitioners, Section 185 of Delhi Land Reforms Act does not apply to the dispute relating to mutation in Annual Register containing the records of rights and this issue has to be strictly dealt with under the provisions of Delhi Land Revenue Act.

7. It is vehemently asserted by learned senior counsel for the petitioners that it is settled position of law that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner and all other modes of performance are necessarily forbidden and it is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided, will be violative of the fundamental principles of natural justice.

8. In effect what was urged by learned Senior Counsel for the petitioners is that a Court of law has no jurisdiction to direct a matter to be governed by one statute when provisions of another statute are applicable. Thus, it is submitted that the impugned order ignoring the aforesaid settled legal position of law, is clearly unsustainable and is liable to be set aside.

9. Mr. B.S. Mann, learned counsel for the respondents, had vehemently urged that the Delhi Land Reforms Act is a parent legislation in the Revenue Jurisdiction, as it creates substantive rights and provides for the machinery for adjudication of disputes referred to by the *Tehsildar* to the Revenue Assistant and the competent

authority to decide the dispute regarding inheritance of *bhumidari* rights in terms of Chapter – III, Part- E of the Delhi Land Reforms Act is the Revenue Assistant who exercises the powers conferred by the Delhi Land Reforms Act, and the dispute regarding the *bhoomidari* rights does not fall within the purview of Delhi Land Revenue Act, which is a procedural law. Thus, it is submitted that the impugned order is legally justified and deserves to be upheld.

10. After having heard both the sides and upon perusal of the impugned order, it transpires that no doubt the procedure governing recording of mutation is prescribed in the Delhi Land Revenue Act, but Section 23 of this enactment itself provides for resort to Delhi Land Reforms Act, 1954, which reads as under:-

‘S.23

Procedure on report- The Tehsildar, on receiving such report or upon the facts otherwise coming to his knowledge, shall make such inquiry as appears necessary and in undisputed cases, if the succession or transfer appears to have taken place, shall direct the Patwari of the halka to record the same in the Annual Register, if the succession or transfer is disputed or the Tahsildar finds that it is in contravention of the provisions of the Delhi Land Reforms Act, 1954, he shall refer the case to the Revenue Assistant, who shall decide it after such inquiry as may be prescribed and where necessary, direct the Annual Registrar to be amended accordingly.’

11. In the instant case, the succession to *bhumidari* rights of late Sh. Laxman Singh by the petitioners on the strength of Will (Ex. PW1/1) is seriously disputed and for this reason, the *Tehsildar* concerned instead of recording the mutation had referred this matter to the concerned Revenue Assistant, who instead of invoking Section 186 of the Delhi Land Reforms Act has himself decided upon the

genuineness and the validity of the Will in question, which is contrary to law. In taking this view, reliance is placed upon the dictum of the decision of a Division Bench of this Court in FAO (OS) 406/2007, '*Ram Niwas Vs. Pitamber Singh and Ors.*' rendered on 29th February, 2008, which is as under:-

'This clearly implies that, if a question of title is raised in an application for declaration of Bhumidari rights under Item 4 of Schedule-I of the Act, that question will then be referred by the Revenue Assistant to the Civil Court; but a party wanting to raise such a question of title in order to claim Bhumidar right cannot directly approach the Civil Court. The Act is a complete Code under which it is clear that any one, wanting a declaration of his right as Bhumidar, or aggrieved by a declaration issued without notice to him in favour of another, can approach the Revenue Assistant under Item 4 of the First Schedule and this he is allowed to do without any period of limitation, because he may be aware of the fact that a declaration has been issued in respect of his holding in favour of another'.

12. In the light of the aforesaid legal position, I find that the concurrent findings of the Deputy Commissioner and the Financial Commissioner, referring the disputed question of succession to the Civil Court for adjudication, is legally sound, as it is not within the domain of the Revenue Assistant to return a finding of a disputed Will being valid or genuine.

13. It needs no reiteration that on the face of it, though the question is of recording of mutation but in fact, unless disputed question of devolution of *bhumidari* rights is decided by invoking the Delhi Land Reforms Act, the recording of mutation under the Delhi Land Revenue Act cannot be done. That is to say, the issue of recording of mutation is procedural which is dependent upon the decision on the substantive issue of devolution of the *bhumidari* rights which has to

be as per the general order of succession in terms of Section 50 of the Delhi Land Reforms Act or on the strength of a bequest by a *bhumidar*, as per Section 48 of the aforesaid enactment. This has to be done by invoking Section 186 of the Delhi Land Reforms Act and the impugned order rightly directs the concerned Revenue Assistant to do so.

14. Since the impugned order does not suffer from any error of law or fact apparent on the face of record, therefore, this petition is dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

November 28, 2011

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