

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: May 17, 2012
Pronounced on: July 02, 2012

+ W.P.(C) 6612/2011

GURCHARAN SINGH Petitioner
Through: Mr. V.P.Rana, Advocate

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents
Through: Mr. Dinesh Garg, and
Ms. Archana Agrawal, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR
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ORDER
02.07.2012

1. The concurrent findings returned by the Collector and the Financial Commissioner are that there was a clear dispute about transfer of 20 bighas and 8 biswas of agricultural land situated in village Ranhola, New Delhi, as detailed in the impugned order (Annexure P-11) [*hereinafter referred to as the 'subject land'*] in favour of the petitioner by respondent No.4- *Shri Atma Ram* on the strength of General Power of Attorney purportedly executed by the recorded *Bhumidar* of the subject land i.e. respondent No.2 – *Smt. Saraswati* and so, mutation of the subject land in favour of the petitioner by the concerned *Tehsildar* is contrary to the mandate of Section 23 of the *Delhi Land Revenue Act, 1954* which requires reference of such disputes to the Revenue Assistant concerned. Since the concerned *Tehsildar* vide order (Annexure P-4) had mutated the subject land in favour of the petitioner in violation of Section 23 of the *Delhi Land Revenue Act, 1954*, therefore, *Tehsildar's*

order (Annexure P-4) has been set aside by the Collector concerned, which has been upheld by the Financial Commissioner vide impugned order (Annexure P-11).

2. It stands noted in the impugned order that there is a strong suspicion about the valid execution of the *Power of Attorney* by respondent- *Smt. Saraswati* in favour of respondent- *Shri Atma Ram*, as the execution of the aforesaid *Power of Attorney* on 28th August, 2000 is at Cuttack, whereas the stamp paper on which it is purportedly executed, was purchased at Delhi and its notarization was also done at Delhi and on the strength of the aforesaid observations, the finding returned is that there was no valid transfer of title in favour of the petitioner, as respondent – *Shri Atma Ram* had lacked authority to execute valid transfer of title in respect of the subject land on behalf of its recorded owner i.e. respondent- *Smt. Saraswati*.

3. The aforesaid finding in the impugned order (Annexure P-11) is assailed by petitioner's counsel by contending that the subject land was validly mutated in favour of the petitioner on the strength of the Sale Deed and upon it being disputed, the Collector ought to have referred the dispute to the concerned Revenue Assistant by invoking Section 23 of the *Delhi Land Revenue Act, 1954*, instead of setting aside the mutation order (Annexure P-4). While relying upon the decision in '*Rajni Tandon Vs. Dulal Ranjan Ghosh Dastidar & Anr.*' 2009 VIII AD (SC) 673, it was contended by petitioner's counsel that the registration of a *Power of Attorney* is not a must and so the impugned order holding to the contrary is bad in law. To urge that entries in the revenue record are for only fiscal purpose and do not evidence ownership, reliance was placed upon the decision in '*Suraj Bhan & Ors. Vs. Financial Commissioner & Ors.*' 2007 SCC 186.

4. Attention of this Court was drawn by learned counsel for the petitioner to the Collector's order (Annexure P-7) to highlight that it is not in dispute that civil and criminal proceedings are pending as regards the execution of the *General Power of Attorney* by respondent – Smt. *Saraswati* in favour of respondent- *Shri Atma Ram*, who in turn had executed the Sale Deed of the subject land in favour of the petitioner, and so the mutation order (Annexure P-4) ought not to have been set aside by returning categorical findings which would prejudice the petitioner in the pending civil and criminal proceedings and thus, the order of the Collector and the Financial Commissioner deserves to be set aside.

5. To the contrary is the submission of learned counsel for the respondents, who supports the impugned order while pointing out that though the *Tehsildar* in the order (Annexure P-4) had noted about respondent- Smt. *Saraswati* denying the execution of *General Power of Attorney* in favour of respondent - *Shri Atma Ram*, but still had mutated the subject land in favour of the petitioner by merely observing that the execution of the Sale Deed remains undisputed, while ignoring that respondent- *Shri Atma Ram* had executed the Sale Deed in respect of the subject land on the strength of disputed *General Power of Attorney* purportedly executed by respondent- *Smt. Saraswati*. Reliance was placed upon decision in '*Narain Singh & Anr. Vs. Financial Commissioner, Delhi*' 2009 I AD (Delhi) 695 to remind that a writ Court cannot examine the merits of a decision by the Financial Commissioner as Appellate Court and the only jurisdiction of the writ Court is to see as to whether there is any error in the decision making process by the Financial Commissioner.

6. To contend that dispute regarding the proposed mutation takes out

the matter out of the jurisdiction of the *Tehsildar* concerned, learned counsel for respondents had placed reliance upon decision in '*M.M. Vashishth Vs. Financial Commissioner*' 114 (2004) DLT 162 and so as per respondent's counsel the mutation order had to be necessarily set aside and thus, impugned suffers from no jurisdictional error or material irregularity requiring any interference by this Court in writ proceedings.

7. Having considered the afore-noted submissions advanced in the light of the decisions cited and upon perusal of the impugned order and the material on record, I find no hesitation to conclude that the jurisdiction to invoke section 23 of the *Delhi Land Revenue Act, 1954*, has to be exercised by the concerned *Tehsildar* when dispute regarding mutation is raised and the higher authorities have to necessarily set aside the mutation order which ignores the dispute of title raised. So far as the concurrent findings returned by the higher authorities negating the mutation order (Annexure P-4), the same cannot be faulted with as the mutation of the subject land has been done by the concerned *Tehsildar* by ignoring that the authority of respondent- Shri Atma Ram was disputed and so there was apparent violation of Section 23 of the *Delhi Land Revenue Act, 1954* by the concerned *Tehsildar*. However, the Collector in its order (Annexure P-7) ought to have invoked Section 23 of the *Delhi Land Revenue Act, 1954* uninfluenced by the pending civil and criminal proceedings between the parties, as the aforesaid provision of law mandates it.

8. Consequently, concurrent findings setting aside the mutation order (Annexure P-4) on the premise that the disputed *General Power of Attorney* on the strength of the which Sale Deed in respect of the subject land has been executed, raises title dispute are endorsed with modification that it warrants reference to the concerned Revenue

Assistant by invoking Section 23 of the *Delhi Land Revenue Act, 1954*. Reference be accordingly made. It is made clear that any observation made by the Collector or the Financial Commissioner, whose orders are impugned herein, will not be taken to be an expression on merits in the reference so made by resort to Section 23 of the *Delhi Land Revenue Act, 1954* or in the pending civil and criminal proceedings.

9. This petition is accordingly disposed of with aforesaid modification, while leaving the parties to bearing their own costs.

(SUNIL GAUR)
JUDGE

July 02, 2012

RS