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

+ LPA 704/2012 & C.M.No.18028/2012 (stay)

KISHOR LAL

..... Appellant

Through: Mr.S.K.Bansal, Adv. with Mrs.Savitri
Bansal, Adv.

versus

RAVINDER KUMAR & ORS

..... Respondents

Through: Ms.Mamta Tandon, Adv. for
Mr.V.K.Tandon, Adv. for R-9 & 10.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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17.10.2012

1. This intra-Court appeal impugns the order dated 23.08.2012 of the learned Single Judge in C.M.No.17101/2011 (for interim relief) in WP(C) No.7554/2011 preferred by the respondents No. 1 to 8. The said writ petition has been filed impugning the order dated 21st February, 2011 of the Financial Commissioner allowing the appeal filed by the appellant herein.

2. The dispute relates to mutation of 25 bighas 3 biswas of land in village Alipur. The said land was allotted in the name of one Shri Sewa Ram. The appellant claims that Shri Sewa Ram 'sold' the land to him and received the entire sale consideration and executed a registered receipt and Will with respect thereto in favour of the appellant and a power of attorney in favour of the nominee of the appellant.

3. The said Sewa Ram died on 19th December, 1976. However, the land continued in the name of Shri Sewa Ram only and in the consolidation proceedings held in the year 1984 also, the allotment was in the name of Shri Sewa Ram only. The appellant claims that the respondents No. 4 to 8, who are the natural heirs of Shri Sewa Ram, in or about the year 2008 got the said land mutated in their favour and immediately after mutation also sold part thereof to the respondents No. 1 to 3. The appellant on coming to know of the said mutation, applied for revocation thereof and the Tehsildar, vide order dated 21st May, 2008 recalled the earlier order dated 19th March, 2008 of mutation in the name of respondents No.4 to 8. The respondents No. 4 to 8 preferred an appeal to the Collector, who vide order dated 9th June, 2009 set aside the order dated 21st May, 2008 of the Tehsildar. It is against the said order of the Collector that the appellant appealed to the Financial Commissioner who vide order dated 21st February, 2011 supra set aside the order of the Collector, i.e., restoring the order dated 21st May, 2008 of the Tehsildar recalling the mutation in the names of respondents No.4to 8.

4. The learned Single Judge has by way of interim relief stayed the operation of the order dated 21st May, 2008 of the Tehsildar and the order dated 21st February, 2011 of the Financial Commissioner. The result of the said interim stay is that the order of mutation in the name of respondents No.4 to 8 and whose assignees respondents No.1 to 3 are, stands.

5. The grievance raised by the appellant before us is that the aforesaid interim order ought not to have been made before the appellant had filed his counter affidavit to the writ petition/reply to the stay application.

6. It is however found that notice of the writ petition was issued to the appellant on 18th October, 2011 for 20th December, 2011. It thus cannot be said that the appellant had no opportunity to file counter affidavit/reply. The counsel for the appellant, of course, states that thereafter vide order dated 12th July, 2012, the learned Single Judge had requisitioned the records.

7. In the circumstances aforesaid, we do not feel the need to interfere with the interim order of the learned Single Judge. Suffice it is to observe that the appellant, after filing his counter affidavit to the writ petition, shall be entitled to apply to the learned Single Judge for vacation/modification of the interim order dated 23rd August, 2012 and which application, we are confident, if filed, will be entertained in accordance with law.

Save for the aforesaid observations, the appeal is dismissed.



CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

OCTOBER 17, 2012
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