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

+ W.P.(C) 10548/2018

BAHADUR SINGH

..... Petitioner

Through: Mr. Anil Mittal with
Mr. Kumar Shubham,
Advocates.

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versus

GOVT. OF NCT OF DELHI AND ORS. Respondents

Through: Mr. V.P. Rana with
Ms. Achyuta Dafdar,
Advocates for respondent nos. 2
to 14.

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CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

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J U D G M E N T

18.05.2023

MINI PUSHKARNA, J.

1. The present petition has been filed challenging the order dated 13.07.2018 passed by the learned Financial Commissioner, Delhi in Appeal no. 167/2016. The petitioner prays for restoration of order dated 04.04.2016 passed by the District Magistrate, District North, Delhi and for remanding back the matter to the Sub-Divisional Magistrate (SDM)/Revenue Assistant (RA), Narela, Delhi for fresh hearing and passing a speaking order in the case.

2. Facts as given in the petition are as follows: One Khemchand, the paternal grandfather of the petitioner herein, was the recorded owner of agricultural land measuring 132 bighas 14 biswas situated in the revenue estate of Village Holambi Khurd, Delhi to the extent of his share i.e. 58 bighas 1 biswas. The said Khemchand had one son, Kali Ram, father of the petitioner herein.

3. It is the case on behalf of the petitioner that after the death of Khemchand, grandfather of the petitioner, his father Kaliram became owner of the said land measuring 58 bighas 1 biswas. Mutation to that effect was sanctioned in the name of Kaliram vide mutation no. 107 on 25.02.1937. It is stated that Kaliram was only 6 months old at the time of sanction of mutation. After the death of his father, Kaliram was brought up by his maternal grandparents and his entire land was being looked after by one Sh. Chandgi and Kuraria, who were cousins of Khemchand, grandfather of petitioner herein. The said Chandgi and Kuraria are predecessors in interest of the respondents 2 to 17 herein.

4. It is the case of the petitioner that the aforesaid Chandgi and Kuraria taking advantage of Kaliram being minor, fraudulently and mischievously with a view to grab the land of Kaliram, got the revenue records fabricated and forged in collusion with the Revenue officials. Upon the enactment of Delhi Land Reforms Act, 1954 (DLR Act), the said Chandgi and Kuraria, predecessors in interest of the respondents, got themselves declared as bhumidars of the said land by virtue of Bhumidari Certificate dated 14.04.1958 issued by the Revenue Assistant, Delhi.

5. It is the case of the petitioner that his father, Kaliram died on 28.08.2003. In the month of September 2008, the petitioner herein being the son of Kaliram, came to know about the fraud having been committed by the predecessors of the respondents, when they found some old revenue records pertaining to the land in question. Thus, the petitioner filed an application under Section 11 of the DLR Act for declaration of his bhumidari rights in the record of the Revenue Assistant (Narela), Delhi.

6. The said application of the petitioner was dismissed by the RA, Narela by order dated 27.07.2009 by applying the doctrine of res-judicata. The said order dated 27.07.2009 passed by RA was challenged by the petitioner before Deputy Commissioner/District Magistrate, North West, Kanjhawala, Delhi by filing an appeal under Section 187 of the DLR Act. By order dated 04.04.2016, the District Magistrate, District North, Delhi set aside the order passed by the RA, Narela and remanded back the matter to the RA, Narela for fresh hearing and passing a speaking order.

7. Respondents herein filed a second appeal before the Financial Commissioner, Delhi being Appeal No. 167/2016 challenging the aforesaid order dated 04.04.2016 passed by the District Magistrate. The learned Financial Commissioner by impugned order dated 13.07.2018 held that predecessors of the respondents herein had been declared bhumidars way back in the year 1958 and by relying upon orders passed in the previous litigation initiated on behalf of father of the petitioner, it was held that the case was barred by principles of res

-judicata. Thus, the present writ petition has been filed.

8. On behalf of the petitioner, it is contended that the documents relied upon by the Financial Commissioner namely Judgment dated 01.05.1958 in *Civil Suit No. 302/1956*; Judgment dated 19.07.1959 in *Suit No. 310/1958* and judgment dated 31.10.1960 passed in Suit No. 207/1960 were not proved before the Courts below in accordance with the provisions of the Indian Evidence Act, 1872. Neither the original record pertaining to the aforesaid judgments nor certified copies thereof were produced before the learned Financial Commissioner or the Courts below.

9. It is further contended that the learned Financial Commissioner gravely erred in relying upon the photocopies of the judgments without their legal proof, which is in violation of Section 62 and 63 of the Evidence Act. The documents produced before Court have to be proved and exhibited in accordance with provision of the Evidence Act, without which they cannot be relied upon.

10. It is submitted that the petitioner applied to the concerned Court for obtaining certified copies of Judgments dated 01.05.1958, 30.04.1959, 31.07.1959, and 31.10.1960. However, the report given by the concerned authorities was that no such record was available. When the original record of the copies of the said judgments was not available, the learned Financial Commissioner erred in law to rely upon them.

11. In support of his submissions, learned counsel for the petitioner relied upon the following judgments:-

- (i) ***The Roman Catholic Vs The State of Madras***, AIR 1966 SC 1457
- (ii) ***H. Siddiqui (Dead) Vs A. Ramalingam***, AIR 2011 SC 1492
- (iii) ***Budhu Vs Nathu & Ors.***, MANU/DE/3720/2022

12. On the other hand, on behalf of the respondents it is contended that the predecessors in interest of the respondents had bhumdari certificate in their favour issued in the year 1958. Neither Kaliram i.e. father of the petitioner or the petitioner had physical possession of the property in question and had no title with respect thereto. Father of the petitioner initiated litigation for declaration of his rights as bhumidar, but without any success. It is submitted that if the submission of the petitioner with respect to the judgments as relied upon by respondents is accepted that they cannot be relied upon in the absence of certified copies, even then no relief can be granted in favour of the petitioner. The bhumdari rights of the predecessors in interest of the respondents were granted in the year 1958 and the litigation initiated in the year 2008 by the petitioner after five years of the death of his father, is clearly barred by limitation, delay and laches.

13. It is contended that the plea of fraud as raised by the petitioner, is baseless as there are no material particulars with regard to the said plea. Further, plea of fraud cannot be taken by the petitioner when his father did not raise this issue during his lifetime. It is submitted that the bhumdari rights of the respondents relate to the year 1958 and no plea of fraud was raised by the father of the petitioner till his death on 28.08.2003.

14. It is contended that there is no explanation in the entire petition as to why the father of the petitioner late Sh. Kaliram, did not file any petition for a period of 45 years, even if the judgments as relied upon by the respondents were to be ignored.

15. It is further contended that father of the petitioner was more than 21 years old in the year 1958 when bhumidari rights in respect of the land was declared in favour of predecessors in interest of the respondents. Thus, there is a delay of more than 50 years in filing application under Section 11 of the DLR Act for declaration of bhumidari rights by the petitioner.

16. It is further submitted that when copy of judgment dated 31.10.1960 in ejectment case *Suit No. 207/1960* was submitted before the Revenue Assistant, the petitioner did not dispute copy of the said judgment.

17. It is further submitted that by virtue of notification dated 25.09.2020, Village Holambi Khurd, Delhi was declared as urbanised village. Thus, it is contended that once a village is urbanised, provisions of DLR Act cease to apply to the said area.

18. In support of his submissions, learned counsel for the respondents has relied upon the following judgments:-

- (i) ***C.S. Ramaswamy Vs. V.K. Senthil & Ors.***, AIR 2022 SC 4724
- (ii) ***Mangtu Vs Financial Commissioner Delhi***, 2007 (97) DRJ 570
- (iii) ***Indu Khorana VS Gaon Sabha & Ors.***, W.P. (C) No.4143/2003, decided on 26.03.2010

(iv) ***Sarvepalli Ramaiah (Died) as per LRs and Ors. Vs District Collector Chittoor District & Ors.***, MANU/SC/0371/2019

19. I have heard learned counsels for the parties and have given my thoughtful consideration to the issues in hand.

20. The facts as canvassed on behalf of the respondents in the impugned order manifests that predecessors in interest of the respondents herein were declared as *bhumidar* in respect of the suit land in the year 1953-54 at the commencement of Delhi Land Reforms Act, 1954 (DLR Act). This declaration was challenged before Civil Court by Sh. Kali Ram, father of the petitioner herein in the year 1956. However, the said suit was dismissed as withdrawn vide order dated 01.05.1958. Late Sh. Kali Ram filed another civil suit which was also dismissed on 31.07.1959. Further, father of the petitioner, late Sh. Kali Ram had occupied the land in question forcibly. Therefore, a suit under Section 84 of the DLR Act was filed by the predecessors in interest of the respondents herein, seeking possession of the subject land. By judgment dated 31.10.1960, it was held that *bhumidari* rights have been granted to the plaintiffs of the said suit i.e. predecessors in interest of the present respondents.

21. On the basis of the aforesaid judgment, the learned SDM/ RA had held that the case as filed on behalf of petitioner herein was barred by the principles of *res judicata*. The petitioner herein is aggrieved by the said findings as given by the learned SDM/ RA and as upheld by the learned Financial Commissioner, on the ground that the respondents had filed only photocopies of the said judgments and not

certified copies. Thus, it has been contended that the said judgments being in the nature of secondary evidence, could not have been relied upon by the Courts below.

22. Even if the aforesaid contention raised on behalf of the petitioner is accepted and the aforesaid judgments as relied upon by the respondents are ignored, even then there is no case made out in favour of the petitioner. The finding in favour of the petitioner on the basis that photocopies of aforesaid judgments could not have been relied upon, at best will manifest that there was no prior litigation with respect to issue in hand, prior to the year 2008, when litigation was initiated on behalf of the petitioner challenging the *bhumidari* rights granted in favour of predecessors in interest of the respondents.

23. It is not disputed that the predecessors in interest of the respondents were granted *bhumidari* rights in the year 1953-54 at the commencement of the DLR Act. If the judgments as relied upon by the respondents are ignored on the ground that secondary evidence was not admissible in the absence of certified copies of the said judgments, then the fact that emerges is that the petitioner filed suit before the SDM/ RA for declaration of *bhumidari* rights in his favour in the year 2008. Thus, right from the year 1953-54, when the predecessors in interest of the respondents were declared as *bhumidars* of the land in question, till his death in the year 2003, father of the petitioner, late Sh. Kali Ram, did not challenge the *bhumidari* rights in favour of the predecessors in interest of respondents. There is no explanation or justification on behalf of the

petitioner as to non-filing of any legal proceedings by his father against the *bhumidari* rights of the predecessors in interest of the respondents.

24. The suit filed before the learned SDM/ RA for declaration of *bhumidari* rights in favour of the petitioner, was filed in the year 2008 i.e. five years after the death of his father, late Sh. Kali Ram. There is nothing on record to show that father of the petitioner was not aware of the possession or the *bhumidari* rights of the predecessors in interest of the respondents. Thus, when father of the petitioner did not file any proceedings under the DLR Act/ Rules for challenging the *bhumidari* rights of the predecessors in interest of the respondents, the proceedings initiated on behalf of the petitioner herein, were not maintainable. The suit filed on behalf of the petitioner in the year 2008 before the SDM/ RA for declaration of *bhumidari* rights in his favour was highly belated and barred by limitation.

25. This Court in the case of ***Mangtu vs. Financial Commissioner and Ors., 2007 SCC OnLine Del 986***, held an application for declaration as *bhumidar* being barred by laches, when the applicant filed such application after 43 years of the declaration of *bhumidari* rights of the other party in the said case. Thus, it was held as follows:

“13. No valid explanation is forthcoming from the petition for waiting for this long a period to invoke provisions of the DLRA. The petitioner also does not appear to have correctly understood the decision of the Hon'ble Supreme Court in Hatti v. Sunder Singh. The scheme appears to be that where the status as a bhumidar has been recognized initially, then there cannot be a constant redetermination

of that status for claiming bhumidari rights by filing a fresh petition under Sec. 11. On the other hand, if a person had never been earlier declared a bhumidar then the mere fact that Rule 8 (4) exists, will not prevent such person from seeking a relief under Section 11. In any event in the facts of the present case, Section 11 could not have been invoked for a negative declaration that the entry in favour of Smt. Chameli Devi had been wrongly made.”

26. In view of the aforesaid detailed discussion, the present writ petition is found without any merits. The same is accordingly dismissed.

**(MINI PUSHKARNA)
JUDGE**

MAY 18, 2023

c/PB