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

\+   W.P.(C) 3838/2014 & C.M. APPL. No.7741/2014

DARYAO SINGH KHATRI (DECEASED)
THROUGH: HIS LRS ..... Petitioner

Through: Mr. Prag Chawla with Mr. Aman Kalra, Advocates.

versus

SATISH KUMAR & ORS. ..... Respondents

Through: Mr. Hitender Kapur with Mr. Sagar Chawla, Advocates for R-2 and LRs of R-3.

CORAM:
HON'BLE MR. JUSTICE V.P.VAISH

<u>O R D E R</u>

%   08.01.2016

1. By way of the present petition the petitioner has impugned the order dated 30.01.2014 passed by learned Financial Commissioner, Delhi in case No.4/2014 titled as 'Smt. Bedo and Ors. vs. Daryao Singh Khatri and Ors.', whereby the appeal filed by the respondents herein was allowed.

2. With the consent of learned counsel for both the parties the matter is taken up for final disposal.

3. Succinctly stating the facts as set out in the petition are that Shri Chunni Lal, S/o Shri Dalpat Singh was the recorded bhumidar of the land comprising Khasra Nos.430/2, 431/2, 509/1, 738 and 741 total measuring (10 – 18) situated in the revenue estate of Village Katewra, Delhi, who expired on 28.05.1973 leaving behind his widow Smt. Chhoto and two married daughters Smt. Savitri Devi and Smt. Bedo Devi. It is stated that Shri Chunni Lal had executed two Wills in respect of the said land, one dated 13.08.1973 in favour of Mr. Dharam Singh, S/o. Shri Nand Lal, which was duly registered in the office of Sub-Registrar, Delhi and another Will dated 15.10.1973 in favour of his two daughters Smt. Savitri Devi and Smt. Bedo Devi, which was registered on 23.10.1973 with the office of Sub-Registrar, Delhi.

4. It is further stated that the petitioner Shri Daryao Singh Khatri (since deceased) filed an application for mutation of the aforesaid land left by Shri Chunni Lal claiming him to be the only rightful successor of late Shri Chunni Lal. It is stated that the matter remained pending for more than 20 years before the Revenue Assistant.

5. After the demise of Shri Chunni Lal, his widow Smt. Chhoto got the land mutated in question in her name vide mutation dated 06.08.1976. Thereafter, Smt. Chhoto executed a Will dated 30.09.1985 in favour of Shri Satish Kumar, respondent No.1 herein.

6. Two daughters of Shri Chunni Lal, Smt. Savitri Devi and Smt. Bedo

Devi challenged the mutation sanctioned in favour of Smt. Chhoto. Vide order dated 31.03.1993 learned Additional Collector set aside the mutation in favour of Smt. Chhoto and remanded the case to the Naib Tehsildar with the direction to decide afresh. Thereafter Revenue Assistant issued notices to all the concerned parties i.e. the petitioner and all the respondents and directed them to file objections.

7. In between one Smt. Kitabo moved an application for mutation of the aforesaid land in question on the basis of Will dated 30.09.1985 alleged to have been executed by Smt. Chhoto. Mr. Daryao Singh Khatri, petitioner herein, filed objection to the same.

8. The respondent Nos.2 and 3 moved an application for mutation of the said land in their favour on the basis of the registered Will dated 15.10.1973, alleged to have been executed by late Shri Chunni Lal.

9. The Revenue Assistant vide order dated 01.04.2013 (signed on 19.03.2013) observed that Smt. Bedo Devi and Smt. Savitri Devi are entitled for mutation in respect of the properties left behind by Shri Chunni Lal and further that the mutation was sanctioned in favour of Smt. Bedo Devi and the LRs of Smt. Savitri Devi in equal share.

10. Shri Daryao Singh Khatri filed an appeal against the said order of the Revenue Assistant. Vide order dated 10.12.2013, District Magistrate and Collector (North Delhi) set aside the order dated 01.04.2013 passed by the Revenue Assistant and it was held that the appellant Shri Daryao Singh

Khatri was entitled for mutation in his favour in respect of the immoveable properties/ estate left by deceased Shri Chunni Lal.

11. Respondent Nos.2 and 3 preferred a second appeal under Section 66 of the Land Revenue Act, 1954 against the order dated 10.12.2013, being Case No.4/2014. Vide impugned order dated 30.01.2014, learned Financial Commissioner set aside the order dated 10.12.2013 passed by the District Magistrate and Collector (North Delhi).

12. The petitioner assailed the impugned order on the ground that the appeal was allowed without issuing any notice and affording an opportunity of hearing to the petitioner. Learned counsel for the petitioner also submits that the impugned order was passed in violation of the principle of *audi alteram partem*, which is treated as fundamental system established by rule of law and any action taken or order passed without complying with that rule is liable to be declared void.

13. The counter affidavit filed by the respondents is also on record.

14. During the course of arguments, Mr. Hitender Kapur, learned counsel for respondents has fairly conceded that he has no objection if the matter is remanded back to the learned Financial Commissioner.

15. I have perused the impugned order and the documents on record. A perusal thereof clearly shows that neither any notice was issued in the appeal nor an opportunity was afforded to the petitioners to put forth their stand

before the Financial Commissioner, which is against the principles of natural justice. These principles are well settled by a catena of decisions of this Court and of the Supreme Court. I need not refer to them. However, in view of the fair concession of learned counsel for the respondents and keeping in view the facts and circumstances of the case, the impugned order dated 30.01.2014 passed by learned Financial Commissioner is set aside and the matter is remanded back for passing a fresh order after affording a reasonable opportunity of hearing to both the parties.

16. The parties are directed to appear before the learned Financial Commissioner on 22.01.2016 at 10:00 a.m.

17. The petition stands disposed of accordingly. The trial court record be sent back forthwith.

C.M. Appl. No.7741/2014

The application is dismissed as infructuous.

V.P.VAISH, J

JANUARY 08, 2016
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