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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Judgment reserved on : 03.11.2016*
Judgment delivered on: 07.11.2016.

\+ W.P.(C) 4289/2012 & C.M. No.8900/2012
SH. KARAMBIR SINGH AND ORS
..... Petitioners
Through Mr.A.K.Sen, Advocate.

Versus

GOVT. OF NCT OF DELHI AND ORS
..... Respondents
Through Mr.Sanjoy Ghose, Mr.Rhishabh Jetley and Ms.Pratishtha Vij, Advocates for R-1 and R-2.
Mr.Rajesh Yadav, Ms.Ruchira Arora and Mr.Dhananjay Mehlawat, Advocates for R-4 to R-9.
Mr.S.S.Panwar and Ms.Nivedita Panwar, Advocate for R-10.

\+ W.P.(C) 3486/2013 & C.M. No.6586/2013
SATBIR SINGH
..... Petitioner
Through Mr. S.S.Panwar and Ms.Nivedita Panwar, Advocate.

Versus

GHANSHYAM DASS & ORS
..... Respondents
Through Mr. Rajesh Yadav, Ms.Ruchira Arora and Mr.Dhananjay Mehlawat, Advocates for R-1 to R-6.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioners before this Court are Satbir and Karambir. They are aggrieved by the three consecutive orders i.e. the order of the Tehsildar (dated 04.07.2009), the Deputy Collector (dated 21.03.2011) as also the order passed by the Financial Commissioner dated 27.03.2012. All these orders had endorsed the finding that the mutation of the disputed land be accorded in favour of the private respondents i.e. respondents No. 4 to 9.

2 The petitioners are aggrieved by this finding.

3 The averments in the writ petition disclose that there was a dispute about the possession of land comprised in khasra Nos. 71, 96, 100, 105, 116, 123, 137, 139, 172, 394/324/325/36, 395/326/327 and 267 situated in revenue estate of village Saidulajaib, New Delhi. Respondents No. 4 to 9 had moved an application for mutation in respect of this subject land. Their claim was based on two sale deeds dated 15.09.1980. Admittedly physical possession of this land was never handed over to the aforenoted respondents. In fact the sale deeds itself recorded that the possession of the said land could not be transferred by the transferor in favour of the transferee

(respondents No.4 to 9) as it was in possession of the actual cultivatory possessors. Contention of the petitioners is that they are in actual physical possession of the land. Contention is that the impugned order of the Tehsildar dated 04.07.2009 recording mutation in favour of respondents No.4 to 9 was an order without any jurisdiction; since disputed questions of fact had arisen and were admittedly pending inter-se the parties, Section 22 of the Delhi Land Revenue Act, 1954 (hereinafter referred to as the 'said Act') clearly provided that the matter had to be referred to the Revenue Assistant/SDM; the Tehsildar could not take it upon itself to decide the question of mutation. The bar of Section 22 was inevitable. This hurdle had not been crossed. The order passed by the Tehsildar was thus a nullity. The subsequent orders passed by the Deputy Collector and the Financial Commissioner endorsing the finding of the SDM are also void for the same reason.

4 Additional submission raised by the learned counsel for the petitioners is that an order had been passed by a Bench of this Court on 06.04.2009 in W.P. (C) No.6824/2008 which was a writ petition filed by respondents No. 4 to 9. This petition had been disposed of on 06.04.2009 and the question of mutation of the subject land was to be decided by the SDM. This was

clearly noted in the order dated 06.04.2009. The SDM has not abided by this direction. The question of mutation has been decided by the Tehsildar which is against the mandate of the order passed by the High Court. The order of the High Court further stated that the notices would be issued to all those parties who might have a say in the matter; notice was not issued to the petitioners who admittedly had a say in the matter as there is a host of litigations pending inter-se the parties. The suit seeking cancellation of the sale deeds dated 15.09.1980 is yet pending inter-se the parties. For all the aforestated reasons, the impugned orders are liable to be set aside.

5 Learned counsel for the petitioners in support of his case has placed reliance upon a Bench of this Court in *DLT 547(DB) Balbir Singh Vs. A.D.M. and Others*. Submission being that possession always plays an important role in the matters relating to land revenue. The Tehsildar without going into the question as to who was holding the lawful possession of the suit land has ordered the mutation. This is against the ratio of the order passed by the Apex Court in *Chattar Pal Vs. Mandir Thakurji and Others* in Civil Appeal No.6086/2000 decided on 30.10.2000 wherein the Apex Court had clearly noted that the mutating authority is required to find out who is in lawful possession of the property on the date when an order for mutation is

passed. This ratio has been bye-passed. Lastly learned counsel for the petitioners has placed reliance upon a judgment of Bench of htis Court in W.P. (C) No.6612/2011 titled *Gurcharan Singh Vs. Govt of NCT of Delhi and Others* delivered on 02.07.2012. Submission being that in this case where there was a dispute about the suit land, in view of Section 23 of the said Act, it was the SDM who would have the jurisdiction to decide the question of mutation and not the Tehsildar as has been done in the instant case. For all the aforestaetd reasons, these orders are liable to be set aside.

6 Learned counsel for the petitioner Karambir has adopted the submissions made by petitioner Satbir. He additionally submits that litigation is pending inter-se the parties which includes not only the suit filed by the petitioners seeking cancellation of the sale deeds dated 15.09.1980 but proceedings under Section 84 of the Delhi Land Reforms Act (DLRA) are also pending inter-se the parties. The petitioners are in possession of the suit land since the year 1974 and all the documents which includes the khasra girdawris have recorded the cultivatory possession of the petitioners. Since the question of title is yet pending inter-se the parties, it was the SDM alone who had the jurisdiction to decide the question of mutation and the Tehsildar taking it upon itself to decide this question has committed an illegality.

Moreover, the order of the Tehsildar dated 06.04.2009 passed in W.P. (C) No.6824/2008 has also not been complied as no notice has been received by the petitioners; they definitely had a say in the matter; they had not been heard.

7 In response, learned counsel for respondents No. 4 to 9 have controverted this stand. Submission is that the question of the sale deeds has been examined by the various Court; evidence had been led before the SDM on the question of the authenticity of the sale deeds. The SDM vide his report dated 29.10.1991 had submitted his recommendation to the Financial Commissioner who had on 05.12.1991 passed an order upholding the validity of the sale deeds dated 15.09.1980 as also the subsequent Will (08.06.1986) executed by the predecessor in interest of respondents No. 4 to 9 in their favour. Additional submission being that after the death of father of the petitioner (in whose favour sale deeds have been executed) the petitioners had been substituted by the Financial Commissioner vide his order dated 17.12.1991. He had in fact remanded the matter back to the SDM. This order of remand had been challenged by the petitioners in W.P. (C) No.1874/1994. This writ petition had been dismissed by the High Court in limine on 05.08.1993 which order was endorsed by the Supreme Court on

15.12.1993. All matters have now come to a rest. The question of the sale deeds being the subject matter of a civil suit is also an eye-wash; submission being that an earlier suit had been filed by the petitioners seeking cancellation of the sale deeds which stood abated; the application filed by the petitioners seeking setting aside of the abatement order had also stood dismissed. That order has become final. The petitioners have now chosen to file a second suit which is not permissible as in the absence of leave having been granted by the concerned Court, a second suit on the same cause of action is not permissible. This argument is being propounded only to harass the respondents and to delay their right which rightfully has passed on to them. Learned counsel for the respondents in support of his submissions has placed reliance upon the definition of 'possession' as also 'lawful possession' as contained in the dictionary Law Laxicon. Submission being that the lawful possession which has been highlighted by the learned counsel for the petitioners in view of the judgment of *Chattar Pal* (supra) does not necessarily mean a physical possession; the Tehsildar had rightfully passed an order dealing with the land in question as there were no disputed questions of facts which had arisen over the title of the land as the sale deeds have been upheld right up to the Apex Court to be authentic documents and this has also been noted by the Division Bench in its ordes dated 06.04.2009.

8 In rejoinder, learned counsel for the petitioners points out that the sale deeds are in fact forged/fabricated documents and permission sought for by the predecessor in interest of the petitioners to obtain an NOC for the sale of the land had in fact been rejected on 08.05.1980. No NOC having been granted in favour of the predecessor in interest of the respondents, a transfer of the land by virtue of the sale deeds dated 15.09.1980 clearly suffers from an infirmity. All these disputed questions are pending before the Civil Court which has to decide the question of the authenticity of the sale deeds. The impugned orders recording mutation in favour of respondents No. 4 to 9 suffers from an illegality and infirmity.

9 Arguments have been heard. Record has been perused.

10 Record shows that the land in question was owned by Chuttan and Chandgi. Chandgi had died on 27.08.1978. Chuttan had executed two sale deeds in favour of Parmanand, father of respondents No. 4 to 9. This was qua the total land i.e. 41 bigha and 17 biswas. Parmanand had expired on 10.04.1981. By operation of law, respondents No. 4 to 9 succeeded to his estate. Chuttan during his lifetime had filed two suits under Section 84 of

the Delhi Land Reforms Act (DLRA) against Mam Chand (father of the petitioners). These suits were dismissed in default. The restoration application was also dismissed. Respondents No. 4 to 9 who had purchased this land from Chuttan thereafter sought to be impleaded as legal representatives of Chuttan on the basis of a Will (executed by Chuttan on 08.06.1986) and strength of two sale deeds dated 15.09.1980. This petition of respondents No. 4 to 9 was dismissed by the Financial Commissioner on 22.09.1987. Against this order, respondents No. 4 to 9 preferred W.P. (C) No.2449/1988. This petition was disposed of 17.05.1989. The matter was remanded back to the Financial Commissioner to decide the validity of the aforenoted sale deeds and the Will. The High Court in this order dated 17.05.1989 had noted that in case any of the aforenoted two documents (sale deeds or the Will) are held to be valid, respondents No. 4 to 9 would have a right to be impleaded as a legal representatives of deceased Chuttan. The Financial Commissioner was vested with this authority.

11 The Financial Commissioner on 26.07.1989 directed the SDM to record evidence in this matter and to submit its report. The SDM vide its order dated 29.10.1991 submitted its reported to the Financial Commissioner having arrived at a conclusion that respondents No. 4 to 9 are the legal

representatives of Chuttan by virtue of the sale deeds as also the Will and are accordingly entitled to be substituted in place of Chuttan. This was after the parties had been given opportunity to lead evidence. The petitioners were represented before the SDM being the legal heirs of Mam Chand. This report of the SDM dated 29.10.1991 was placed before the Financial Commissioner. The Financial Commissioner vide his order dated 05.12.1991 allowed substitution of respondents No. 4 to 9 in place of deceased Chuttan. The Financial Commissioner in its order had in fact noted that the factum of execution of the sale deeds and Will has not been contested by the non-applicants/petitioners. The Financial Commissioner while upholding the sale deeds and the Will concluded that respondents No. 4 to 9 were liable to be impleaded as legal representatives of deceased Chuttan. On 17.12.1991, the Financial Commissioner disposed of the revision petition pending before it and remanded the matter back to the trial Court where the petitions for ejectment (filed by the petitioner) were stated to be pending. This order of remand was challenged by the petitioners in a writ petition. This petition was dismissed in limine on 05.08.1993. A Special Leave Petition preferred against the order dated 05.08.1993 was also dismissed on 15.12.1993.

12 Record thus shows that the title of respondents No. 4 to 9 had been clinched by the order passed by the Financial Commissioner who had endorsed the findings returned by the SDM. It is relevant to note that the SDM has recorded evidence of the parties to draw a conclusion that the sale deeds dated 15.09.1980 and the Will dated 08.06.1986 executed by Chuttan were both valid and authentic documents entitling respondents No. 4 to 9 to be substituted in placed of deceased Chuttan. The submission of the petitioners that the SDM could not have decided the authenticity of the sale deeds is negatived by the fact that in the instant case, it was pursuant to the order of this Court dated 17.05.1989 passed in W.P. (C) No.2448/1988 that the SDM had been given the authority to decide about the validity of the sale deeds and the Will. Pursuant to this order passed by a Bench of this Court, the authenticity and validity of sale deeds and Will had been examined by the SDM who had given a report in favour of respondents No. 4 to 9 to the Financial Commissioner who had endorsed this finding of the SDM. The order of the Financial Commissioner is dated 05.12.1991.

13 It is also relevant to note that since the authenticity of these two documents had been upheld in favour of respondents No. 4 to 9 but inspite of respondents No. 4 to 9 having preferred applications repeatedly before the

Revenue Authorities seeking mutation of the land in question in their favour and no order being passed in their favour, they had been constrained to move a writ petition which was W.P. (C) No.6824/2008 before this Court. A Bench of this Court had noted that the mutation application of respondents No. 4 to 9 dated 10.01.1992 should be taken up and decided by the SDM in accordance with law.

14 The SDM had thereafter relegated the matter to the Tehsildar. The Tehsildar had passed an order dated 04.07.2009. This order records that the application of respondents No. 4 to 9 seeking mutation was being decided in terms of the directions of this Court in its order dated 06.04.2009 passed in W.P. (C) No.6824/2008. The Tehsildar in this order had also noted that the question of mutation has been earmarked to him by the SDM. After recording the detailed history of the case and noting the submissions and counter submissions of the parties, the SDM had passed an order in favour of respondents No. 4 to 9 holding that mutation should be effected in favour of respondents No. 4 to 9. The Tehsildar had noted that notices had been issued to the predecessor in interest of respondents No. 4 to 9 namely Chuttan but not had appeared for him. Public notices were accordingly issued in two

daily nationals namely ‘Statesman’ and ‘Veer Arjun’ inviting objection but no one had filed any objection.

15 The order of the Tehsildar was upheld by the Deputy Collector in the second impugned order i.e. order dated 21.03.2011. The petitioners before this Court i.e. Karambir and Satbir were represented before the Deputy Collector. Admittedly they were not present before the Tehsildar but their submission that they have remained unheard is negatived by the fact that they had the ample opportunity to place their case before the Deputy Collector which they did and this has been noted in almost 30 page long order passed by the Deputy Collector. The objections now raised before this Court were in fact highlighted by the Deputy Collector. The petitioner had brought to the notice of the Deputy Collector that the Tehsildar did not have the jurisdiction to decide the question of mutation; provision of Sections 22 & 23 of the said Act had been highlighted. Contention of the petitioner before this Court is that this aspect on Section 22 of the said Act has not been considered by the Deputy Collector in the right perspective. It had wrongly held that physical possession is not necessary for the purpose of Section 22.

16 This Court notes this argument again today. This Court notes that Section 22 of the said Act envisages a report of succession or transfer of possession. The word 'possession' as highlighted in Section 22 does not necessarily entail physical possession as has vehemently argued before this Court. This has been rightly noted by the Deputy Collector. The question of physical possession is not the aspect which has to be considered while dealing with Section 22. Section 23 of the said Act is also clear. It provides that the Tehsildar on receiving a report or on facts otherwise coming to his knowledge in undisputed cases may deal with an application seeking recording of rights in the annual register. The vehement contention of the learned counsel for the petitioners that this was not an undisputed case where the Tehsildar could have assumed jurisdiction is negatived by the fact that the question of dispute in this case did not arise as the title of respondents No. 4 to 9 to succeed to the land in question (based on the sale deed dated 15.09.1980) has been up-held by the SDM (after recording evidence) in its order dated 29.10.1991 which was endorsed by the Financial Commissioner on 05.12.1991. Respondents No. 4 to 9 had been substituted in place of deceased Chuttan on the strength of the aforenoted sale deeds and the Will

executed by deceased Chuttan. Subsequent order had been passed by the Financial Commissioner on 17.12.1991.

17 This order was assailed in W.P. (C) 1874/1992 which was dismissed on 05.08.1993 and again endorsed by the Apex Court on 15.12.1993. Thus it was rightly assumed by the Tehsildar that being an undisputed case, he could decide the application of respondents No. 4o to 9 seeking mutation.

18 Submission of the petitioners that there is yet another suit inter-se the parties where cancellation of the sale deeds dated 15.09.1980 was sought appears to be an eye-wash. The petitioners are not allowing the matter to rest which as per this Court has come to a rest after the order of the Financial Commissioner dated 17.12.1991 (upholding the validity of sale deeds and Will) was a re-endorsement of the order of the Deputy Collector.

19 This Court also notes that earlier suit filed by the petitioners seeking cancellation of the sale deeds had been dismissed as abated on 09.08.1986. The application under Order XXII Rule 9 of the CPC filed by the petitioners seeking setting aside of the abatement order was dismissed on 11.01.1991. This subsequent suit has been filed in 26.08.1988 challenging the same sale deeds. Learned counsel for the respondents submits that the petitioners cannot be permitted to challenge the sale deeds once again when on the same

cause of action his suit has abated. This Court also notes that admittedly in that pending suit, there is no stay which has been granted in favour of the petitioners. This Court also notes that recording of entries in revenue records does not confer title on a person. This has been held by the Apex Court in catena of judgment including the judgment in (2007) 6 SCC 186 *Surab Bhan and Others Vs. Financial Commissioner and Others*. Relevant extract of that order is reproduced herein as under:-

> *"There is an additional reason as to why we need not interfere with that order under Article 136 of the Constitution. It is well settled that an entry in Revenue Records does not confer title on a person whose name appears in Record of Rights. It is settled law that entries in the Revenue Records or Jamabandi have only 'fiscal purpose' i.e. payment of land-revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent Civil Court (vide Jattu Ram v. Hakam Singh and Ors. MANU/SC/0399/1994 : AIR1994SC1653). As already noted earlier, Civil Proceedings in regard to genuineness of Will are pending with High Court of Delhi. In the circumstances, we see no reason to interfere with the order passed by the High Court in the writ petition."*

20 A candid query has also been put to the learned counsel for the petitioners as to how they would be effected by the aforenoted impugned orders which have only recorded the name of respondents No. 4 to 9 in the annual register i.e. in the revenue record which the Apex Court has noted to be largely for a fiscal purpose. The query which has been put to the petitioners is as to whether armed with these orders, the respondents can take

recourse to law and physically dispossess the petitioners as the case of the petitioners is that they have been in settled possession of this land since the last several decades. The answer to this query is that the petitioners admittedly cannot be dispossessed from the land by the aforenoted impugned orders. This Court also notes that the submission of the petitioners that the NOC had not been granted to Chuttan to sell the aforenoted land is a wrong submission. Although admittedly the NOC had been sought transfer of land and the same declined on 08.05.1986 yet the subsequent NOC had been granted to Chuttan on 27.08.1988 and this has also been recorded in the sale deeds dated 15.09.1980.

21 The ratio of judgment of *Balbir Singh* (supra) is inapplicable. In that case, Delhi Land Revenue Rules, 1962 were under challenge. In that context, an orbiter had been recorded that possession plays an important role in matters relating to land revenue. The judgment of *Chattar Pal* has discussed the concept of lawful possession which does not necessarily entail a physical possession. The judgment of *Gurcharan Singh* also related to disputed questions of facts where the Court was of the view that provisions of Section 23 would be applicable. In the instant case, this Court has already

noted that there is no dispute about the sale deeds which issue has already been set to rest.

22 In view of the aforenoted narration of facts, this Court is not inclined to interfere with the impugned orders.

23 Writ petitions are without any merit. Dismissed.

INDERMEET KAUR, J

NOVEMBER 07, 2016
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