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

Reserved on 17.11.2015

Pronounced on 03.02.2016

+ LPA 30/2015 and CM Appl. 3272/2015(for vacation of stay) &
1095/2015(stay)

RAVINDER SINGH & ANR

..... Appellants

Through: Mr.Sudhir Nandrajog, Sr.
Advocate with Mr.Parvinder Chauhan and
Mr.Abhilash Vashisht, Advocates.

Versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr.Satyakam, Standing Counsel
with Mr.Nikhil Bardwaj, Advocate for R-1.

Respondent No.2-in-person.

Mr.D.Rajeshwar Rao and Mr.Charanjeet Singh,
Advocates for G.S.Nangli Poona/R-3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JUDGMENT

JAYANT NATH, J.

1. The present appeal is filed seeking to impugn the order of the learned Single Judge dated 29.10.2014. By the impugned order the learned Single Judge has quashed the order dated 15.12.2009 passed by the Financial Commissioner.

2. The brief facts which can be culled out from the pleadings and various documents placed on record are that one Shri Anant Ram was the recorded owner of land measuring 2 bighas and 13 biswas bearing Khasra

No.41/12 situated in village Nangli Poona, Delhi. Out of the said land of Shri Anant Ram 1 bigha and 6 biswas of land was said to have been sold to Shri Ram Lal Aggarwal father of appellant No.2 on 29.08.1989. During the consolidation proceedings the ownership of appellant No.2 was reduced to 1 bigha and 4 biswas (hereinafter referred to as the 'said land'). Shri Ram Lal Aggarwal then sold the said land to his son appellant No.2 on 28.5.1990. Thereafter appellant No.2 on 24.3.2005 sold the land vide Power of Attorney to appellant No.1. Respondent No.2 claims that his father was in possession of the said land and on the death of his father on 22.9.2002 respondent No.2 claims to have come in possession of the land.

3. Respondent No.2 moved two applications dated 20.12.2004 and 12.01.2005 for recording of his cultivatory possession over the said land before the Tehsildar. Claiming that the Tehsildar was not dealing with these applications, respondent No.2 filed a Writ Petition before this High Court being W.P.(C) No.7435/2005. This Writ Petition was disposed off on 25.10.2005 with a direction to the Tehsildar to decide the applications as per law. The applications were dismissed by the Tehsildar vide orders dated 22.6.2006. In the meantime, another application was also filed by respondent No.2 for recording of cultivatory possession in relation to crop period Kharif for 2006 for the said land. This was also dismissed by the Tehsildar vide order dated 13.8.2007.

4. The respondent No.2 thereafter filed an appeal under section 64 of the Delhi Land Revenue Act, 1954 in the Court of Deputy Commissioner against the two orders passed by the Tehsildar dated 22.6.2006 and 13.8.2007. The Tehsildar after going through the evidence came to the

conclusion that there is no logical basis or reasoning in the impugned orders and set aside the orders dated 22.6.2006 and 13.8.2007 of the Tehsildar. A direction was passed that the name of respondent No.2 be entered in the Khasra Gidawaris for the year 2004 (Rabi and Kharif), 2005 (Rabi) and 2006 (Kharif) with respect to the said land falling in Khasra No.41/12 village Nangli Poona, Delhi.

5. The appellants thereafter filed an appeal before the Financial Commissioner under section 66 and 72 of the Delhi Land Revenue Act, 1954. The Financial Commissioner vide order dated 15.12.2009 held the order of the Deputy Commissioner dated 10.4.2008 as unsustainable and set aside the same.

6. The respondent No.2 filed the present Writ Petition No.3316/2010 challenging the order of the Financial Commissioner. This Writ Petition was allowed vide impugned order dated 29.10.2014 quashing the order of the Financial Commissioner dated 15.12.2009 and upholding the order of the Deputy Commissioner dated 10.4.2008.

7. We have heard learned counsel for the parties and gone through the record. Learned senior counsel appearing for the appellant has urged that the impugned order passed by the learned Single Judge is entirely erroneous. It is stated that vide the impugned order the court has converted itself into an appellate court reappreciating the evidence led by the parties and has come to a different conclusion on facts which was impermissible while exercising powers under Article 226 of the Constitution of India. Reliance is placed on *Hari Vishnnu Kamath vs. Ahmad Ishaque and Others, AIR 1955 SC 233* and *Ranjeet Singh vs. Ravi Prakash 2004 (3) SCC 682* to contend that the jurisdiction of the

High Court was not available to exercise any reappreciation or revaluation of documents/evidence or correct errors of conclusion of facts by the Court of Appeal. The Court could not have acted as an appellate Court. A Writ of Certiorari can only be issued to correct an error of law. It is further urged that the impugned order has also gone into the issues which were never even raised before the Tehsildar and relief has been granted on grounds which were not even sought from the Tehsildar. Reference is made to findings recorded in the impugned order, namely, that the land was originally allotted under the 20 Point Programme and hence could not have been sold. A finding is also recorded that the sale effected in favour of appellant No.2 Shri Anil Kumar Aggarwal is contrary to Section 33 of the Delhi Land Reforms Act. It is urged that these findings and issues were not a subject matter of the application filed by respondent No.2 before the Tehsildar and no such relief had been sought by the respondent No.2 and yet while dealing with challenge to the order of the Financial Commissioner, the learned Single Judge has granted these reliefs. Hence, it is urged that the order of the Single Judge is liable to be set aside.

8. The respondent No.2 appeared in person. He has relied upon some of the documents to contend that he was in cultivatory possession of the land and the order of the learned Single Judge is in order.

9. It would be useful to first see the legal position regarding a Writ of Certiorari that may be issued by the High Court when exercising power under Article 226 of the Constitution of India. Reference may be had to the judgment of the Supreme Court in the case of ***Hari Vishnu Kamath vs. Ahmad Ishaque (supra)*** where a constitutional bench of Supreme

Court held as follows:-

21. Then the question is whether there are proper grounds for the issue of certiorari in the present case. There was considerable argument before us as to the character and scope of the writ of certiorari and the conditions under which it could be issued. The question has been considered by this Court in *Parry & Co. v. Commercial Employees' Association, Madras*, AIR 1952 SC 179 (L), *Veerappa Pillai v. Raman and Raman*, AIR 1952 SC 192 (M), *Ibrahim Aboobaker v. Custodian General of Evacuee Property, New Delhi*, AIR 1952 SC 319 (N) and quite recently in AIR 1954 SC 440 (C). On these authorities, the following propositions may be taken as established : (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to re-hear the case on the evidence, and substitute its own findings in certiorari. These propositions are well settled and are not in dispute.

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23. It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much

in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record ? Learned Counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated. Mr. Pathak for the first respondent contended on the strength of certain observations Chagla, C.J. in *Batuk K. Vyas v. Surat Borough Municipality*, AIR1953Bom133 (R) that no error could be said to be apparent on the face of the record if it was not self-evident, and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.”

10. In *Surya Dev Rai vs. Ram Chander Rai and Ors.*, AIR 2003 SC 3044 (MANU/SC/0559/2003) the Supreme Court held as follows:-

“37. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-

(1).....

(2).....

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits

of jurisdiction, or (iii) acting in flagrant disregard of law or the rules or procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision

preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.”

11. Hence, when exercising power under Article 226 when issuing a Writ of Certiorari, the High Court would not review findings of facts reached by an inferior Court or Tribunal even if they are erroneous. The Court is exercising only supervisory and not appellate jurisdiction. It would not be for the superior Court to re-hear the case on the findings of facts and substitute its own findings.

12. We may now see the scheme of the statutory provisions under which the proceedings have been carried on. The application was filed by respondent No.2 before the Tehsildar under section 27(2) of the Delhi Land Revenue Act, 1954 which provides that all disputes regarding entries in the annual register shall be decided by the Tehsildar on the basis of possession. The appeal before the Deputy Commissioner was filed under Section 64 of the said Act. Similarly, the appeal before the Financial Commissioner was filed under section 66 of the Act which provides for a second appeal on grounds as stated in the provision. Financial Commissioner also exercised powers under section 72 of the said

Act whereby he has supervisory powers and he may summon any file and exercise jurisdiction as per the said provisions. No further appeal is envisaged in the said act.

13. We may first have a look at the order passed by the Tehsildar rejecting the original application of respondent No.2. The order notes that as per revenue record appellant No.2 is the recorded owner of the land and that respondent No.2 is claiming cultivatory possession of the land which belonged to somebody else i.e. possession is stated to be unauthorised and without the consent of the recorded owner. The order notes that the respondent No.2 has examined four witnesses including himself. It also notes that respondent No.2 is a government servant working in the Ministry of Petroleum and residing at New Rajinder Place, New Delhi. The evidence of respondent No.2 was noted that he is not able to come to the village daily and there are several occasions when he is not able to cultivate the land because of paucity of time. The Tehsildar also noted that respondent No.2 has indulged in dirty tactics to manipulate and fabricate the evidence in his favour. The Tehsildar also noted that four witnesses claimed that they were tilling the land of respondent No.2 though none of them were named in the affidavit by way of evidence filed by respondent No.2. The evidence of the witnesses was disbelieved and the application of respondent No.2 was dismissed. Regarding the second application the Tehsildar carried out a site visit of the land and based on that and other circumstances concluded that cultivatory possession of respondent No.2 is not proved. He also dismissed the said application.

14. We may now come to the impugned order of the learned Single

Judge and see the grounds on which it has reversed the judgment of the Financial Commissioner. The grounds noted by the learned Single Judge to quash the order of the Financial Commissioner are as follows:-

(i) Appellant No.1 had filed W.P.(Crl.) No.1667/2005 before this Court to restore his possession on the land and sought quashing of FIR No.254/2005. The same was dismissed on 29.9.2005. The impugned order concludes as the petition was filed by respondent No.2 was obviously in possession of the land in question. Similarly, reference is also made to W.P.(C) 2657/2006 where also appellant No.1 sought directions to restore his possession. This petition was dismissed on 17.8.2007 for non prosecution. Hence, the order states that respondent No.2 was in possession of the land.

(ii) Appellant No.1 on 6.1.2006 filed objections against an illegal entry in Form P-5 in favour of the respondent No.2 where he has admitted that he was dispossessed illegally and unauthorisedly from the said land.

(iii) Reliance is also placed on a report by Shri Rajinder Singh Kannugo dated 28.5.2005 who is stated to have inspected the spot and found that the land was being cultivated by respondent No.2.

(iv) Similarly, reliance is placed on Form P-5 where under Rule 66 changes are recorded on 15.10.2009 in Column No.8 where name of the person found in possession is recorded as respondent No.2. It is also noted that under section 67(d) of the Act if a person is deprived of his possession the right to

recover the same is for a limited period of three years. Section 85 provides that if the suit is not filed under section 84 within the period of limitation the person taking or retaining possession shall become a bhumidar.

(v) Reliance is also placed on an application filed on 22.1.1982 before the SDM by Shri Anant Ram, the original allottee for being declared Bhumidar. It is urged that an order was passed on 19.4.1983 declaring the applicant as the Bhumidar. Reliance is also placed on a Circular dated 3.10.1996 issued by the Office of Additional District Magistrate, (Revenue) that transfer of land where a Bhumidari right was conferred under the 20 Point Programme shall be in violation of section 33 of the Act. Reliance was placed on various judgments to hold that the land cannot be permitted to be sold.

(vi) Reliance is also placed on section 33 of The Delhi Land Reforms Act to hold that the transfer in favour of Shri Ram Lal Aggarwal is in violation of the said provisions. It was also held that the sale of the land being in contravention of section 33, 67 and 85 of the Act was illegal and void *ab initio*. As the purchase was illegal the order holds that the mutation in favour of appellant No.2 automatically becomes illegal and the appellants have no right to claim bhumidari rights over the land.

(vii) The appellants have not produced any witness in support of their case before the Tehsildar whereas respondent No.2 has examined four witnesses. Despite this, the Tehsildar has

rejected the applications of respondent No.2 including the evidence led by him and the site inspection report filed by Rajinder Singh Kannugo.

15. Numerous other such facts have been gone into in the impugned order. The order finally concludes as follows:-

“99. The Financial Commissioner has erred in not relying upon the report of Rajinder Singh, Kanungo, statement of Bhoop Singh and other facts as discussed above, however, relied upon the testimony of Halka Patwari, who admitted in cross-examination that he did not find the petitioner in possession while passing its judgment dated 15.12.2009. The fact remains that the said Patwari also admitted that he did not file any report pursuant to order made by Tehsildar. There is no explanation as to why he did not file the report pursuant to the order passed by the Tehsildar, Narela.

100. In view of the above discussion, impugned order dated 15.12.2009 passed by the Financial Commissioner is hereby set aside and order dated 10.04.2008 passed by the Deputy Commissioner is upheld.”

16. A perusal of the above reasons for setting aside the order of the Financial Commissioner makes it quite clear that the impugned order contrary to the legal position regarding exercise of powers under Article 226 of the Constitution of India and contrary to the principles governing issue of Writ of Certiorari has carried out a detailed exercise reviewing the findings of facts recorded by the Lower Court. It has gone into evidence in detail, reappraised the whole evidence and substituted its own findings with that of the concerned Courts. In our opinion, the impugned order is erroneous and is liable to be set aside.

17. There is another reason on account of which in our opinion the

impugned order is liable to be set aside. The order has adjudicated upon issues and granted relief to respondent No.2 which was never claimed in the original application filed before the Tehsildar or never arose in the said proceedings.

18. The impugned order states that the land in dispute was allotted to Shri Anant Ram under The 20 Point Programme and relying upon the judgment of this High Court in *Pawan Kumar and Ganga Bishan Gupta vs. Financial Commissioner and Others, 107(2003) DLT 726* the impugned order holds that no sale of such land was permissible. The order also holds that under section 33 of the Delhi Land Reforms Act the said Shri Anant Ram is said to have sold a portion of his land which was below the permissible limit and hence the land could not have been sold under section 33, 67 and 85 of the Act and the purchase by Ram Lal Aggarwal and the appellants herein is illegal and void ab initio. Accordingly, the order holds that the sale deed in favour of the appellant is illegal and void ab initio and the mutation in favour of the appellant is also illegal.

19. The above relief had never been sought for by the respondent No.2 (petitioner) before the Tehsildar. The original application before the Tehsildar was filed by respondent No.2 for recording his cultivatory possession over the land in dispute. There is no discussion in the said order of the Tehsildar dated 22.6.2006 or 13.8.2007 regarding the said issues on which relief has also been granted to respondent No.2. The learned Single Judge while issuing a Writ of Certiorari could not have gone into issues which are not subject matter of the relief as originally claimed by respondent No.2. The impugned order suffers from illegality

and has to be set aside on this ground also.

20. In fact these issues were noted in a litigation between the parties which was adjudicated upon by the Supreme Court pertaining to a certain criminal complaint filed by respondent No.2. In the judgment being ***Ravinder Singh vs. Sukhbir Singh and Others, 2013(9) SCC 245*** the Supreme Court noting such arguments held that even if the sale by the original allottee in favour of R.L.Aggarwal was illegal as he could not transfer the land allotted to him by the government under the Poverty Elevation Programme, such illegality would not confer any right on respondent No.2.

21. While disposing the appeal and allowing the SLP the Supreme Court commented on the conduct of respondent No.2 as follows:-

“32. The facts on record make it evident that the land on which both parties claim title/interest had initially been allotted to one Anant Ram, a member of the Schedule Caste community, under the 20 Point Programme of the Government of India (Poverty Elevation Programme) and he sold it to one Ram Lal Aggarwal in the year 1989, who further transferred it to his son Anil Kumar Aggarwal in the year 1990. Anil Kumar Aggarwal sold the same to Appellant Ravinder Singh in the year 2005. Respondent No. 1, who at the relevant time was holding a very high position in the Central Government, claimed that initial transfer by Anant Ram, the original allottee, in favour of Ram Lal Aggarwal was illegal and he could not transfer the land allotted to him by the Government under Poverty Elevation Programme and further that as the said land had been encroached upon by his father, he had a right to get his name entered in the revenue record. Thus, it is clear that the Respondent No. 1, became the law unto himself and assumed the jurisdiction to decide the legal dispute himself to which he himself had been a party being the son of a rank trespasser. Transfer by the original allottee at initial stage, even if illegal,

would not confer any right in favour of the Respondent No. 1. Thus, he adopted intimidatory tactics by resorting to revenue as well as criminal proceedings against the Appellant without realising that even if the initial transfer by the original allottee Anant Ram was illegal, the land may revert back to the Government, and not to him merely because his father had encroached upon the same.

33. The High Court has dealt with the issue involved herein and the matter stood closed at the instance of Respondent No. 1 himself. Therefore, there can be no justification whatsoever to launch criminal prosecution on that basis afresh. The inherent power of the court in dealing with an extraordinary situation is in the larger interest of administration of justice and for preventing manifest injustice being done. Thus, it is a judicial obligation on the court to undo a wrong in course of administration of justice and to prevent continuation of unnecessary judicial process. It may be so necessary to curb the menace of criminal prosecution as an instrument of operation of needless harassment. A person cannot be permitted to unleash vendetta to harass any person needlessly. *Ex debito justitiae* is inbuilt in the inherent power of the court and the whole idea is to do real, complete and substantial justice for which the courts exist. Thus, it becomes the paramount duty of the court to protect an apparently innocent person, not to be subjected to prosecution on the basis of wholly untenable complaint.”

22. We have mentioned the above para to show the conduct of respondent No.2 who continues to litigate for the said land.

23. In view of the position as stated above, we allow the present appeal and set aside the impugned order dated 29.10.2014.

**(JAYANT NATH)
JUDGE**

(CHIEF JUSTICE)

February 03, 2016/n