*　IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 06.12.2017
Pronounced on: 15.12.2017

\+　**LPA 79/2017**

BIJENDER KUMAR …. Appellant
Through: Sh. Rajiv Khosla with Sh. Devinder Verma and Ms. Apoorva Khosla, Advocates.

versus

FINANCIAL COMMISSIONER AND ORS. .... Respondents
Through: Ms. Manika Tripathy Pandey with Sh. Ashutosh Kaushik, Advocates, for Respondent Nos. 1 to 3.
Sh. Rahul Gupta with Sh. Shekhar Gupta, Sh. Gaurav Singh and Sh. Pratyush Shrivastava, Advocats, for Respondent Nos. 4 to 27.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

MR. JUSTICE S. RAVINDRA BHAT

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1. This appeal impugns a judgment and order of a learned Single Judge, which dismissed a writ petition that had challenged a mutation entry in respect of land being 30 bighas 4 *biswas* in *Khasra* No. 485/1, Village Bijwasan, Delhi.

2. The facts are that the appellant's father, Raja Ram owned the said property; he died without a son. The suit lands were mutated (entered in the name of) Khazani, his daughter (and the appellant's mother) soon after his death. The appellant's contention before the learned Single Judge, in his writ petition, filed after his pleas were turned down by the lower revenue officials (and the Financial Commissioner) was that the land could not devolve upon

his mother because, by virtue of Section 50(p) of the Delhi Land Reforms Act, 1954 (DLRA) on the death of Raja Ram, mutation should have been recorded in his name; inadvertently, the name of his mother Khazani was recorded. The appellant was a minor at that time; he was born on 01.04.1971. The mutation by the revenue authorities of the suit land in the name of his mother contravened Section 50(p) of DLRA.

3. Khazani died in 1974. The land was mutated in the name of the appellant on 16.10.1993 and this state of facts continued till when the Mutation Officer recorded the name of Phool Kaur as the recorded owner of the suit property. This was on the strength of a sale deed executed by Khazani in favour of Phool Kaur. The appellant urged that this sale deed was void as Khazani was never the original owner of the property and she could not have transferred this land to Phool Kaur. He also argued that Section 33 of the DLRA also prohibits such transfer and where as a result of the transfer, the transferor is left with less than 8 standard acres of land and thus such a transaction (which is in contravention of that provision) is void under Section 45 of the said Act. The entire sale pursuant to which the land was mutated in favour of Phool Kaur is a void transaction. It was also argued that the appellant's father, Chandan, got remarried and the stand which he took in a pending suit, was prejudicial to the interest of the appellant who was then a minor and, therefore, not binding upon him.

4. The appellant argued that his father and mother, despite having no right in the suit land, have made collusive litigation and without having any right and interest in the aforesaid land, had contested the civil case upto the High Court of Delhi and when factum of litigation came to his knowledge he attempted to safeguard his interests. However, since the pleadings were not

being made before the trial court on his behalf, the Court declined relief. He also urged that the civil court was not the proper forum to challenge the revenue records and accordingly the appellant invoked jurisdiction of the Tehsildar challenging the mutation effected by the revenue authorities without even affording an opportunity to the petitioner and the cancellation of the mutations by order of the revenue authorities, dated 10.02.2012 and impugned order dated 07.03.2012.

5. The Financial Commissioner, who heard and decided the revision petition, preferred by the appellant (challenging the mutation entry reversals made by the lower revenue officials) held as follows:

> *"I have heard counsels of both sides at length and carefully gone through the materials placed on record. In my opinion, there is no infirmity in the impugned order passed by the Tehsildar as the same is passed in consonance with the order of Hon'ble High Court of Delhi in RFA No. 44/1986 titled Smt. Phool Kaur vs. Sardar Singh & Ors. as well as judgment of Supreme Court dated 25.04.2011 in the case in case no. SLP No. 8411/2011 titled Sardar Singh through LRs and Ors. Vs. Phool Kaur & Ors. Hence, the order dated 10.02.2012 and 07.03.2012 is upheld. Therefore, I see no merit in the present revision petition filed by the petitioner, hence the same is hereby dismissed. Accordingly, the interim injunction granted by this court vide order dated 13.01.2015 will also be vacated. The petition is disposed off accordingly."*

6. The learned Single Judge affirmed those findings, after discussing and rejecting the appellant's contentions regarding violation of Sections 33 and 50(p) of the DLRA and lack of jurisdiction of the Consolidation Officer to revise mutation entries.

7. Mr. Rajiv Khosla, the appellant's counsel argued that the learned Single udge has failed to appreciate that the Consolidation Officer has no jurisdiction, authority, power, capacity to pass mutation order, because the mutation order can only be passed by the *Tehsildar* in undisputed cases and by Revenue Assistant regarding disputed matter and the matters regarding contravention of the provisions of the Delhi Land Reforms Act under Section 23 of DLRA. It was also argued that the Consolidation Officer was discharging his duty under the provisions of East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 and so the mutation orders dated 10.02.2012 and 07.03.2012 are null and void, without jurisdiction, authority as the mutation order can only be passed under Section 23 of DLRA and so as per law the mutation order passed by the Consolidation Officer has no sanctity in the eyes of law.

8. It was argued that the learned Single Judge failed to appreciate that regarding contravention under Section 33 of the Delhi Land Reforms Act and Rule 144 and 145 of the said Rule, the same can be taken cognizance of, by the Revenue Assistant at the time of dealing with the mutation proceedings. Due to this reason, none of the revenue authorities adjudicated that issue earlier. Counsel relied on *Master Mayank Vashishth v. Financial Commissioner and ors*. 114 (2004) DLT 162 to say that any violation of provisions of DLRA is to be decided by the Revenue Assistant under Section 23 of Delhi Land Revenue Act, 1954 at the time of dealing with the mutation.

9. Counsel for the respondents argued that the impugned judgment does not call for interference. It was argued that the petitioner did not question mutation in favour of Khazani at all, after he attained majority; rather he was

a party to all the civil proceedings; even in the appeal filed by this court. He, in fact, never opposed the position adopted by his parents, that Phool Kaur was a lawful transferee of the suit lands. It was further argued that Sardar Singh claimed that he was the rightful owner, on the strength of an agreement to sell; the previously instituted civil proceeding ultimately culminated in a final and binding decision that Phool Kaur was a lawful transferee. It was pointed-out that this Court's decision in the appeal, was carried in appeal to the Supreme Court, which dismissed the special leave petition.

10. It is apparent from the above discussion that the previous litigation history in this case, is a chequered one. The appellant's *leitmotif,* so to say, is that the mutation in favour of his mother was unlawful, as he was the rightful heir under Section 50 (p) of the DLRA; around this dominant theme, he weaves two other subsidiary arguments, i.e, that the holding is less than the mandatory 8 standard acres and that the Consolidation Officer had no jurisdiction to direct mutations.

11. This Court is of the opinion that the appellant's contention, and this appeal have to fail. Undoubtedly, he was a party to the civil suit, which prolonged till 1984, when the civil court decided that Phool Kaur had purchased the property from Khazani. The appellant's interests were taken care of by his father, Chandan. No doubt, it suits the appellant *now,* to argue that his father's action as guardian was prejudicial to him. But this is an argument of convenience, as it glosses over the detail that the appellant became a major in 1989, when the appeal was pending before this court. At no stage, then, or later, did he "right" the wrong, and repudiate the stand originally entered on his behalf that Phool Kaur was a lawful purchaser and

successor-in-interest, of the suit lands. The judgment of this Court, in the appeal preferred by Sardar Singh, was rendered in 2010; the appeal by special leave was dismissed. Thus, a quietus was given to the contentious issue of legality of the transfer. In these circumstances, the appellant's submissions with respect to violation of provisions of DLRA and lack of power of the revenue officials, are nothing short of opportunistic, if not entirely speculative. Having defended the title of the purchaser, he now seeks to undermine it, stating that not only his mother could not have sold the land, but that he could not have in fact supported the transfer. In the opinion of this Court, all arguments of nullity of orders or actions, of revenue authorities, based on these contentions, have to fail. Having once adopted a position in the pleadings and vigorously prosecuted it, on the record, the appellant cannot now reprobate and say the opposite. In these circumstances, the learned Single Judge's findings cannot be faulted as unreasonable.

12. In view of the foregoing conclusions, this Court is of opinion that the appeal has to fail; it is, therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

SANJEEV SACHDEVA
(JUDGE)

DECEMBER 15, 2017