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

% Judgment delivered on: 25.10.2017

\+ LPA 42/2017 & C.M. 1953/2017

SATBIR SINGH ..... Appellant

Through: Mr. S.S. Panwar, Adv.

versus

GHANSHYAM DASS & ORS. ..... Respondents

Through: Mr. Rajesh Yadav, Ms. Ruchira Arora and Mr. Dhananjay Mehlawat, Advs. for R-1 to 6
Ms. Urvi Mohan, Adv. for Mr. Sanjay Ghose, ASC for GNCTD

\+ LPA 140/2017 & CAV 184/2017, C.M. 7674/2017, 7676/2017

KARAMBIR SINGH (SINCE DECEASED)
THR LRS & ORS. ..... Appellants

Through: Ms. Minati Murari, Adv.

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents

Through: Mr. Rajesh Yadav, Ms. Ruchira Arora and Mr. Dhananjay Mehlawat, Advs. for R-4 to 9
Mr. S.S. Panwar, Adv. for R-10

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

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The appellant challenges the order dated 07.11.2016 passed by learned Single Judge. The learned Single Judge dismissed the writ petition. In the writ petition, the appellant had in a sense challenged the mutation of suit land and contended that they were entered illegally in the Revenue records.

2. The petitioner/appellant’s claims cultivator possession of the suit land, located in village Said-Ul-Ajaib which are part of Revenue estates of village Said-Ul-Ajaib.

3. Learned Single Judge has noticed that the petitioner had challenged the title of the respondents/purchasers. The suit abated and the matter was not pursued thereafter.

4. An earlier decision of the Revenue authorities was questioned before the Financial Commissioner, who too dismissed the petitioner’s contentions on 17.12.1991. That order attained finality upon rejection of the writ petition (C) 1874/1992, which was again unsuccessfully challenged before the Supreme Court in Special Leave Petition.

5. In yet another round, (in W.P. 6824/2008), the Court had required an examination of the matter by the SDM. This time round, the Tehsildar decided the issue again adverse to the petitioner. The appeal preferred to the Deputy Collector was unsuccessful as was the second appeal before the

Financial Commissioner. That order was challenged in these proceedings.

6. The learned Single Judge reasoned as follows:

> *"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.*
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> *16. This Court notes this argument again today. This Court notes that Section 22 of the said Act envisages <u>a report of succession or transfer of possession</u>. 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. 4 to 9 seeking mutation.

18. ***** ***** *****

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 <u>Surab Bhan and Others Vs. Financial-Commissioner and Others</u>. 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: AIR 1994 SC 1653). 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 NOG had not been granted to Chuttan to sell the aforenoted land is a wrong submission. Although admittedly the NOG had been sought transfer of land and the same declined on 08.05.1986 yet the subsequent NOG had been granted to Ghuttan on 27.08.1988 and this has also been recorded in the sale deeds dated 15.09.1980."

7. It is quite evident that the petitioner's challenge to the title and mutation has repeatedly failed. Furthermore, their independent claim set up in proceedings under Section 85 of the Delhi Land Reforms Act, 1954, also failed. All these facts were taken into consideration. The substantial plea

that the Tehsildar did not possess the jurisdiction to decide the issue or the matters, because of the remit order made in the writ petition of 2008, in these circumstances, the matter is unpersuasive. The Court finds no reason to interfere in the order of learned Single Judge.

8. The Appeals are hereby dismissed but in terms of the above observations.

S. RAVINDRA BHAT
(JUDGE)

SANJEEV SACHDEVA
(JUDGE)

OCTOBER 25, 2017
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