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

%   ***Judgment delivered on: 10th May, 2019***

\+   W.P.(C) 7554/2011

1. SHRI RAVINDER KUMAR.
2. SHRI VIJAY KUMAR
3. SHRI PRIYAVART
4. SHRI PEHLAD ANAND
5. SHRI SUDERSHAN KUMAR ANAND
6. SHRI SITA RAM ANAND
7. SHRI MAHESH CHAND ANAND
8. SHRI SANJEEV ANAND ...Petitioners

Through: Mr. R. S. Tomar, Advocate.

versus

1. KISHORI LAL.
2. TEHSILDAR NARELA OFFICE AT ALIPUR, DELHI
3. COLLECTOR (N-W) AT KANJHAWALA, DELHI ...Respondents

Through: Mr. B. Tripathy, Advocate with Mr. Randhir Pandey, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Instant is a petition preferred by petitioners under Article 226/227 of The Constitution of India challenging the legality and

validity of order dated 21.02.2011 passed by the Ld. Financial Commissioner in Case No. 109/09-CA.

2. Brief facts stated are that one Sewa Ram was allotted agricultural land at village Tuglakabad on 27.11.1952, later, on his application, he was allotted another land bearing khasra Nos. 45/18 (4-9), 23 (1-0), 22 (1-12), 47/3 (0-17), 48/16 (4-9), 17 (4-16), 18 (4-16) 22 Min (2-8) and 23 Min (3-17) total measuring 28 bighas 10 biswas situated in the revenue estate of Village Alipur, Delhi on 08.11.1974 in place of land allotted to him at Tuglakabad on his request.

3. Sewa Ram after the allotment of the aforesaid agriculture land entered into agreement to sell it with Respondent No.1 on 12.02.1963 and consideration thereof has been received before Sub Registrar on 11.03.1974.

With the passage of growing age, Sewa Ram did not wish to put Respondent No.1 into difficult situation after receiving consideration amount and he executed a registered Will in favour of respondent No.1 on 11.03.1974.

Later Sewa Ram died on 19.12.1976 leaving behind 3 sons namely Pehlad Anand P-4, Sudershan Kumar Anand P-5, Sita Ram Anand P-6 and two sons of late Surender Anand namely Mahesh Chand Anand P-7 and Sanjeev Anand P-8. The petitioner No.4 to 8 who were successors of Late Sewa Ram did not took any step for mutating the aforesaid land in their favour. In the year 2008, after a gap of 32 years, they moved an application for mutation before the Tehsildar and consequential mutation of Khasra Nos. 45/18 (4-9), 23

(1-0), 22 (1-12), 47/3 (1-3), 48/16 (4-9), 17 (4-16), 18 (4-16) 22 Min (2-8) and 23 Min (3-17) total measuring 28 bighas 10 biswas mutated in favour of the Petitioner No.4 to 8 at the back of the Respondent No.1. In the same year, Respondent No.1 came to know that mutation got effected in favour of the Petitioner No. 4 to 8 and he moved application for cancellation of mutation before the Teshildar on the basis of registered Will and other documents. The Tehsildar reviewed its earlier order dated 19.03.2008 and subsequent mutation of Khasra Nos. 45/18 (4-9), 23 (1-0), 22 (1-12), 47/3 (0-17), 48/16 (4-9), 17 (4-16), 18 (4-16) 22 Min (2-8) and 23 Min (3-17) total measuring 28 bighas 10 biswas made on the basis of registered Will in favour of Kishori Lal R-1. Later, Respondent No.1 came to know that Petitioner No.4 to 8 sold 9 Bighas and 5 biswas land comprising khasra No.48/16 (4-9) and 17 (4-16) to petitioner No.1 to 3 for valuable consideration of Rs. 30 lakhs, through Sale Deed duly registered with the sub-Registrar on 03.04.2008.

4. Thereafter, the petitioners have challenged the order dated 21.05.2008 before the Collector and after hearing the parties Collector passed the order in favour of the petitioners vide order dated 09.05.2009.

5. Respondent No.1 aggrieved from the order of Collector preferred appeal before Ld. Financial Commissioner and after hearing both the parties, Ld. Financial Commissioner accepted the appeal and consequential directions were passed vide order dated 21.02.2011.

6. Aggrieved from the order of Ld. Financial Commissioner present petitioners have challenged the impugned order on following grounds: -

i. That the Tehsildar does not have power to review his own order and in case any party had any grievance against his order, remedy of Appeal is available under law, which Respondent No.1 did not avail. Therefore, order of Tehsildar dated 21.05.2008 was nullity in the eyes of law.

ii. That order of Ld. Financial Commissioner is bad in law for not holding the review order which is without jurisdiction and against the law.

iii. That possession of aforesaid land was never handed over to Respondent No.1 and it remains in the possession of Petitioner No. 4 to 8 and Petitioner No. 4 to 8 rightly sold 9 Bighas and 5 biswas in favour of the petitioner No.1 to 3 and lawful title was rightly transferred in favour of the petitioner No.1 to 3. The petitioners pray for quashing of order dated 21.02.2011 passed by Ld. Financial Commissioner.

7. The Ld. Counsel for the petitioners has submitted that the impugned order dated 21.02.2011 is bad in law as Tehsildar exceeded in jurisdiction to decide the matter in favour of Respondent No.1.

8. The Ld. Counsel for the petitioners further submitted that petitioner No.4 to 8 has sold 9 Bighas and 5 biswas land comprising khasra No.48/16 (4-9) and 17 (4-16) to Petitioner No.1 to 3 and the title of aforesaid land has already been transferred in favour of

Petitioner No.1 to 3. He further submitted that finding of the Ld. Financial Commissioner is against the law and facts on record and placed his reliance on ***Swaran Kaur and others v. Ld. Financial Commissioner, Punjab and others***, 2016 SCC Online P&H 10790.

9. Per contra, Ld. Counsel for Respondent No.1 has submitted that Ld. Financial Commissioner has rightly passed the impugned order as per facts and law in the present case and consequentially present petition is liable to be dismissed.

10. The order of the Ld. Financial Commissioner does not require any interference on the following grounds: -

i. The land in dispute is khasra Nos. 45/18 (4-9), 23 (1-0), 22 (1-12), 47/3 (1-3), 48/16 (4-9), 17 (4-16), 18 (4-16) 22 Min (2-8) and 23 Min (3-17) total measuring 28 bighas 10 biswas situated in the revenue estate of Village Alipur, Delhi which holds the character of self-acquired property in the hands of Sewa Ram as well as in the hands of his sons namely Pehlad Anand P-4, Sudershan Kumar Anand P-5, Sita Ram Anand P-6 and grandsons namely Mahesh Chand Anand P-7 and Sanjeev Anand P-8. Late Sewa Ram was competent to execute sale, gift and Will in favour of any person he wishes.

ii. The Will dated 11.03.1974 is a registered Will and the presumption of its valid execution lies in favour of Respondent No.1.

iii. The Revenue entries remain in favour of late Sewa Ram till year 2008 and subsequent entries are the result of consequential mutation. No immediate step for mutation in favour of Petitioner No.4 to 8 was taken on the death of Late Sewa Ram. No satisfactory explanation is coming on the record for not taking step for mutation for last 32 years by Petitioner No.4 to 8 brings only one conclusion that Petitioner No.4 to8 were aware of the execution of the registered Will date 11.03.1974 and other documents.

iv. Once, there exist a registered Will in favour of the Respondent No.1, the Revenue Officer is bound to give effect to the registered Will as well as other registered documents executed in favour of Respondent No.1. The dispute, pertaining to, not valid execution of the Will, lies with the Civil Court and not with the Revenue Court.

v. So far, the question of exceeding jurisdiction by Tehsildar/C.O. (Alipur) by reviewing his own order is concerned the same losses its significance, in presence of the same plea taken before the Ld. Financial Commissioner, who is the highest Revenue Court. The Ld. Financial Commissioner himself has gone into relevant facts on record and has given his findings and directions to the Tehsildar/C.O. (Alipur) leaving no scope to interfere with the findings by this Court.

vi. The Will dated 11.03.1974 is a registered document which is more than 32 years old and the presumption of valid execution is attached. Therefore, onus is upon the petitioner to challenge the validity of the said Will before the concerned Civil Court. The Will in question is a registered Will, as such, the title of the land in question passes with the registered Will. The onus of Will in question, not being genuine, lies with petitioners and it is for the petitioner to challenge the same before a competent Civil Court as per the Law.

vii. The mutation in favour of the Petitioner No.4 to 8 and consequential sale in favour of Petitioner No.1 to 3, no good title passes in presence of Registered Will dated 11.03.1974. Petitioner No.1 to 3 gets into the shoes of Petitioner No. 4 to 8.

viii. The title of the aforesaid land is already transferred in favour of Respondent No.1 by way of registered Will dated 11.03.1974. The Petitioners unless set aside the consequential mutation on the ground of Will being not genuine or not validly executed, the position in Law remains the same in favour of Respondent No.1. Therefore, the order of the Financial Commissioner does not require any interference as he has passed the appropriate order and necessary direction to upkeep the revenue records as per the Law.

11. As such, under Article 226 and 227 of The Constitution of India this Court finds no ground to interfere with the impugned order passed by the Financial Commissioner dated 21.02.2011. Reliance is placed on ***Suraj Bhan and Others v. Financial Commissioner and Others***, (2007) 6 SCC 186.

12. The reliance placed by the petitioners on ***Swaran Kaur and Others*** (Supra) is misplaced**.**

13. Writ petition is accordingly dismissed. Applications, if any, are accordingly disposed of. No order as to costs.

I.S.MEHTA

(JUDGE)

MAY 10, 2019