$~2(2019)

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

% **Date of decision: 03rd December, 2021**

\+ W.P.(C) 5123/2019, CM APPL. 22647/2019

SHARDHANAND AND ANR. ..... Petitioners

Through: Mr. M.M. Singh, Adv.

versus

KRISHAN PAL AND ORS. ..... Respondents

Through: Mr. J.K. Jain, Adv for respondent Nos. 6-8.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. Heard learned counsel for parties.

2. The challenge in the present writ petition is to an order passed by the Financial Commissioner on 15 March 2019. The Financial Commissioner has passed the aforesaid order on a revision preferred by the respondents here referable to Section 72 of the Delhi Land Revenue Act, 1954[1].

3. The challenge in the revision was to an order of 22 March 2016 passed by the Deputy Commissioner pursuant to a report submitted by the Tehsildar on an application made by the petitioner here seeking to invoke the provisions of Section 26 of the Act. Section 26 of the Act contemplates correction of a mistake or error in the annual register.

---

[1] Act

4. By the order dated 22 March 2016, the Deputy Commissioner directed corrections being made in those records relating to the respective shares of parties. That order came to be assailed by the respondents here before the Financial Commissioner where it was contended that the powers conferred upon the Deputy Commissioner by virtue of Section 26 of the Act could clearly not be invoked bearing in mind the fact that what was sought to be done was not a mere rectification of a clerical error or omission but one which would impact the substantive rights of parties.

5. The Financial Commissioner while dealing with the revision had also taken note of the fact that Deputy Commissioner had proceeded in the matter without even placing the respondents here on notice. Taking the aforesaid fact into consideration, it has also recorded that the order passed would be liable to be viewed as being void.

6. It is this latter part of the finding recorded in the impugned order by the Financial Commissioner which appears to have been taken note of and initially submitted by learned counsel that once the Financial Commissioner found that the Deputy Commissioner had proceeded in the matter without following the principles of natural justice, the ends of justice warranted the matter being remitted to the Deputy Commissioner for considering the issue afresh.

7. Mr. Jain, learned counsel appearing for the respondents, however, draws the attention of the Court to the following crucial findings on merits as recorded by the Deputy Commissioner in the impugned order.

> "4. Heard both the sides at length perused the all material records placed in the file. This is the case of continuous Litigation which had already been decided by lower Court. In year, 1979, Sh. Ishwar Singh father of Respondents had filed a case for change of share but the same was dismissed by the Court of Revenue Assistant vide order dated

> 24.03.1986. An appeal against the same was also dismissed by Additional Collector, Delhi vide order dated 16.10.1996. Hence, it attained the finality.
>
> 5. Further, another application for correction of entries of respondents was also dismissed by Tehsildar Narela vide order dated 07.05.2005. However, appeal against the said order was still pending, while impugned order has been passed one another application dated 27.08.2015.
>
> 6. The Section 26 of the Delhi Land Revenue Act could have been appealed only for any clerical error in the records prepared post year 1953-54 i.e. after commencement of Delhi Land Reforms Act not for entries made before year 1953-54. Any mistake was committed by the Consolidation Authority prior to 1947-48 an application under Section 26 of Delhi Land Revenue Act could not have been entertained. The Deputy Commissioner/Collector (North) overlooked this fact while passing the impugned order."

8. As is manifest from the findings recorded, the Financial Commissioner has found that what was essentially sought to be undone was the rectification of an entry made prior to 1947-48 when consolidation was undertaken. The Court notes that it is not the case of the petitioner here that the provisions of Section 26 was sought to be invoked to seek correction of the revenue records on the ground that they were contrary to the position as found in the course of consolidation. Admittedly, revenue records are redrawn to fall in line with the ultimate scheme of consolidation which is finalised and promulgated. It is in the aforesaid context that the Financial Commissioner has proceeded to hold that the application which would have resulted in the modification of entries as made post-consolidation would not be maintainable and the provisions of the Act had been wrongly invoked.

9. The Court notes that the finding with respect to infraction of the principles of natural justice was made in addition to what was found by the Financial Commissioner on merits and noticed above. Once the Financial

Commissioner had come to hold that the application under Section 26 could not be maintained, there was no justification for the matter being remitted to the Deputy Commissioner.

10. Learned counsel has additionally submitted that the petitioners had been deprived of their lawful share in the property and it was this mistake which was sought to be corrected by the Deputy Commissioner in terms of the report submitted by the Tehsildar. The aforesaid submission is noticed only to be rejected since corrections of shares *inter se* cannot possibly fall within the ambit of proceedings contemplated under Section 26 of the Act.

11. The view as taken by the Financial Commissioner merits no interference by the Court.

12. The writ petition along with pending applications shall stand dismissed.

YASHWANT VARMA, J.

DECEMBER 3, 2021/*neha*