(2016) 03 DEL CK 0097

In the Delhi High Court

Case No : LPA 1773/2006 & C.M. No. 16623/2014

Chatter APPELLANT

Vs

Financial Commissioner of Delhi and Others RESPONDENT

Date of Decision : 22-03-2016

Acts Referred:

Delhi Land Revenue Act, 1954 — Section 23, Section 50, Section 64(1) (c), Section 67
Limitation Act, 1963 — Section 5

Citation : (2016) 03 DEL CK 0097

Hon'ble Judges : G. Rohini, C.J. and Jayant Nath, J.

Bench : Division Bench

Advocate : Ravi Gupta, Sr. Adv., Ashim Vacher and Bhoomija Verma, Advocates, for the Appellant;

Final Decision : Disposed off

Judgement

G. Rohini, C.J.

1. This appeal is directed against the order of the learned Single Judge dated 28.6.2006 in W.P.(C) No. 4/1998.

2. The appeal was initially dismissed by the Division Bench by judgment dated 25.08.2006. The appellants carried the matter in appeal to the Supreme Court and Civil Appeal No. 4314/2007 was allowed by order dated 31.07.2014 thereby setting aside the order of the learned Single Judge dated 28.07.2006 as well as the order dated 25.08.2006 of the Division Bench and remanding the matter to this Court for de novo consideration. Pursuant thereto, the appeal has been listed before us.

3. We have heard the learned counsel for both the parties. The material available on record shows that the dispute between the parties pertains to inheritance of the share of late Sara in agricultural lands situated in village Rajokri, Tehsil Mehrauli, New Delhi.

4. For proper appreciation of the controversy we shall at the outset narrate the

facts in brief.

(i) One Shri Gangal was the owner and possessor of agricultural lands situated in village Rajkori, Tehsil Mehrauli, New Delhi (hereinafter referred as ''land in question''). He had four sons, namely, Hira Singh, Ram Singh, Ram Saran and Shambu. Smt. Sara is the widow of late Harlal, s/o Ram Singh (second son of Gangal) who died issueless. Her name was recorded as bhoomidar in respect of the share to which her husband had succeeded out of the land in question. She died in the year 1966. Thereafter, by order dated 10.12.1966 passed by the Tehsildar, Mehrauli, the mutation of inheritance of late Sara was sanctioned in favour of Chatter, son of Shambu, (fourth son of Gangal). Against the said order of Tehsildar dated 10.12.1966 the legal heirs of Nanwa, son of Hira Singh (first son of Gangal) filed an appeal in the year 1995 before the Collector (South West) along with an application under Section 5 of the Limitation Act, 1963 for condonation of delay.

(ii) By order dated 30.7.1997 the Collector (South West) condoned the delay and on merits it was held that the Tehsildar''s order dated 10.12.1966 was contrary to the provisions of Section 23 of the Delhi Land Revenue Act, 1954. Accordingly the order dated 10.12.1966 was set aside and the matter was remanded to the Revenue Assistant/ SDM to pass a fresh order after giving due opportunity to both the parties.

(iii) Against the said order of the Collector dated 30.07.1997 Chatter filed a further appeal under Section 64(1) (c) of the Delhi Land Revenue Act, 1954 before the Financial Commissioner, which was dismissed in limine by order dated 13.11.1997. Hence, Chatter filed WP No. (C) 4/1998 contending inter alia that both the Collector and the Financial Commissioner committed an error in overlooking the fact that the appeal for setting aside the mutation was preferred after 29 long years. The Learned Single Judge declined to interfere observing that the order impugned in the writ petition was merely a remand order and would not in any manner prejudice the writ petitioner. Accordingly, the writ petition was dismissed by order dated 28.7.2006 directing the Revenue Assistant to hear the matter on merits and pass a speaking order within 6 months.

(iv) LPA No. 1773/2006 preferred by the writ petitioner (Chatter) against the order of the learned Single Judge was dismissed by the Division Bench by order dated 25.8.2006.

(v) The appellant/writ petitioner filed Civil Appeal No. 4314/2007 contending inter alia that Section 67 of the Delhi Land Revenue Act, 1954 does not contemplate condonation of delay in filing an appeal and, therefore, no appeal could have been entertained by the Collector (South West) in the year 1995 against the order of the Tehsildar dated 10.12.1966. However, it was contended on behalf of the respondents that they had the knowledge of the order of mutation dated 10.12.1966 only on 14.12.1995 and, therefore, the appeal was within time. Though the Collector (South West) had proceeded on the basis that the respondents had knowledge only on 14.12.1995, it was found by the Supreme Court that there was no discussion of the material brought on record to come to the said conclusion. It was also found that there was no consideration of several documents including the General Power of Attorney dated 09.12.1993 and 06.09.1994 executed by the respondent Nos. 3 and 4 therein and the sale deed dated 29.09.1995 jointly executed by the appellant and the respondent Nos. 3 and 4, produced by the appellants to contradict the plea that the respondents had the knowledge of mutation only on 14.12.1995 either by the appellate authorities or by this Court in the writ petition as well as Letters Patent Appeal. The Supreme Court, therefore, allowed the appeal by order dated 31.07.2014 and remanded the matter to this Court for fresh consideration.

5. That is how, the appeal is listed before us for consideration afresh. Before proceeding further, the relevant paragraphs from the order of the Supreme Court dated 31.07.2014 may be reproduced hereunder for ready reference:-

"8. As Section 67 of the Delhi Land Revenue Act, 1954, does not contemplate condonation of any delay in the filing of an appeal, the crucial question for determination in the present case would be date of knowledge of the respondents as regards the mutation order in favour of the appellant. Though the Deputy Commissioner had proceeded on the basis that the date of such knowledge is 14.12.1995, there has been no discussion of the materials brought on record by the respective parties to come to the aforesaid conclusion. In the course of his argument, Dr.Rajeev Dhawan, learned senior counsel for the appellant has drawn our attention to several documents including the Power of Attorney dated 9th December, 1993/6th September,1994 executed by Respondent Nos. 3 & 4 and the Sale Deed dated 29th September, 1995 jointly executed by the Appellant and Respondent Nos. 3 and 4 to contend that the plea set up by the respondents with regard to the date of acquisition of knowledge on 14.12.1995 is plainly wrong.

9. From the orders of two Authorities under the Act as well as the orders of the learned Single Judge and the Division Bench of the High Court, we do not find any consideration whatsoever of any of the documents placed before us which were also on the record of the proceedings before the Authorities and the Courts below though a determination on the basis thereof was crucial for a just decision in the matter. We are, therefore, of the view that the matter should be remanded to the Division Bench of the High Court for de novo consideration on the basis of the documents referred by us and such other documents that may be now brought before it by the parties, so as to arrive at a finding as to the date on which respondent Nos. 3 & 4 came to know of the mutation order dated 15.12.1996. Once the said determination is made, the Division Bench naturally will be required to decide the further question of the maintainability of the appeal filed before the Deputy Commissioner in the light of the provisions of Section 67 of the Delhi Land Revenue Act. As the matter has remained pending for a considerable time, we request the High Court to complete de novo exercise in

terms of the present order within a period of six months from the date of receipt of copy of this order. Consequently, the order dated 28.07.2006 of the learned Single Judge and the order dated 25.08.2006 of the Division Bench are set aside and the appeal is allowed in terms of the above directions and observations."

6. It may, at the outset, be mentioned that the Writ Petitioner (Chatter) died and the present appeal is now being pursued by his legal representatives, (1) Amar Nath, (2) Mahabir Prasad, (3) Rajbir, (4) Devinder and (5) Manoj. Similarly the Respondent No. 4 in the writ petition (Badlu) has also died and his legal representatives, namely, Karamvir and Sunita have been arrayed as Respondent Nos. 4(a) and 4(b) respectively.

7. Section 67 of the Delhi Land Revenue Act, 1954 (for short ''the Act) which provides for filing of an appeal within 30 days from the date of the order complained of reads as under:-

67. Limitation for appeal -

(1) No appeal to the Settlement Officer, the Record Officers or the Deputy Commissioner or to an Additional Collector empowered to hear appeals shall be brought after the expiration of 30 days from the date of the order complained of, unless otherwise specially provided by or under this Act or the Delhi Land Reforms Act, 1954.

(2) No appeal or second appeal to the Chief Commissioner shall be brought after the expiration of 60 days from the date of the order complained of.

8. Admittedly, Section 67 of the Act does not provide for condonation of delay in filing the appeal.

9. In the present case, the mutation order was passed by the Tehsildar on 10.12.1966 and it is not in dispute that the appeal under Section 67 of the Act was preferred on 21.12.1995. It is no doubt true that the said appeal which was filed long after the expiry of 30 days period of limitation cannot be entertained, however, the specific plea of the respondents herein was that they had the knowledge of the order of mutation only on 14.12.1995 and thus the appeal which was presented on 21.12.1995 was well within the period of limitation. The appellants have categorically denied the plea of the respondents that they had the knowledge of mutation only on 14.12.1995 and for the said purpose they placed reliance upon various documents. In terms of the order of the Supreme Court dated 31.07.2014 remanding the matter to this Court, on consideration of the documents referred by the Supreme Court as well as the further documents produced by the parties, a finding has to be recorded as to the date on which the respondent Nos. 3 and 4 came to know of the mutation order.

10. After remand, the following documents have been filed on behalf of the appellants and the same are taken on record vide order dated 30.01.2015 and 03.08.2015 in CM No. 1575/2015 & C.M. No.3095/2015 respectively:

(a) Certificate bearing No.ADM/LAC/SW/2006-2007/7240 dated 17.11.2006 issued by the office of the Land Acquisition Collector (South West).

(b) Certificate bearing No.ADM/LAC/SW/2006-2007/7239 dated 17.11.2006 issued by the office of the Land Acquisition Collector (South West).

(c) Copy of the General Power of Attorney dated 6th September, 1994 executed by Shri Badlu in favour of Shri Prakash Sharma.

(d) Copy of Sale Deed dated 29th September, 1995 executed jointly by Late Shri Chatter, the Respondent No. 3 and the Respondent No. 4 in favour of Shri Vishwa Bandhu Aggarwal.

(e) Copy of the Sale Deed dated 29th September, 1995 executed by Late Shri Chatter, the Respondent No. 3 and the Respondent No. 4 in favour of Shri Vishwa Bandu Aggarwal.

(f) Copy of the Sale Deed dated 29th September, 1995 executed by Shri Ram Chander and Late Shri Badlu through their attorney Shri Prakash Sharma in favour of M/s. Heavenly Farms Private Limited.

(g) Copy of the Appeal dated 27th December, 1995 filed by the respondent Nos. 3 and 4 before the Additional Collector, Delhi.

(h) Copy of the Stay Application dated 27th December, 1995 filed by the Respondent Nos. 3 and 4 before the Additional Collector, Delhi.

(i) Copy of the report dated 31.08.1987 forwarded by Delhi Administration, Land & Building Department, Vikas Bhawan, New Delhi.

(j) Copy of the report dated 05.04.1988 forwarded by Delhi Administration, Land & Building Department, Vikas Bhawan, New Delhi.

11. As mentioned above, there was a specific reference by the Supreme Court in the remand order dated 31.07.2014 to (i) the Power of Attorney dated 09.12.1993 and 06.09.1994 executed by respondent Nos. 3 and 4 and (ii) sale deed dated 29.09.1995 jointly executed by the appellant and the respondent Nos. 3 and 4.

12. Placing reliance upon the abovesaid documents, it is contended by the learned Senior Counsel appearing for the appellants that the plea of the respondents that they had the knowledge of the mutation only on 14.12.1995 is false and, therefore, the appeal preferred in 1995 was barred by limitation.

13. On the other hand, it is contended by the learned counsel for the respondents that the respondents came to know of the mutation order only on 14.12.1995. It is also submitted by the learned counsels that the date of knowledge being a disputed question of fact cannot be decided by this Court and it would be appropriate to send the matter back to the Land Acquisition Collector.

14. The question that requires consideration by us, is whether on the basis of the

documents provided by the appellants, a finding can be recorded that the plea of the respondents that they came to know about the mutation proceedings only on 14.12.1995 is false. In other words, whether a finding can be recorded by us on the material available on record, that the respondents were aware of the mutation proceedings in the year 1966 itself as sought to be contended by the appellants or at least much prior to 14.12.1995.

15. The specific case of the appellants is that Chatter succeeded to 1/3rd share of Smt. Sara- widow of Harlal on her death in the year 1966 in terms of Section 50 of the Delhi Land Reforms Act, 1954. It is claimed that thus, Chatter became owner of 2/3rd share of the land in question whereas the respondent Nos. 3 and 4- Rampat and Badlu are the owners of remaining 1/3rd share. It is also claimed that on 10.12.1966, the 1/3rd share of Smt. Sara was mutated in favour of Chatter in the revenue records. Thereafter, on 26.5.1967 part of the land in question was acquired by the Government and the compensation paid by the Government was received by Chatter and respondent Nos. 3 and 4 on 30.03.1968 in the ratio of 2/3rd and 1/3rd respectively. It is also claimed that on 09.12.1993 the respondent No. 3 Ram Chander executed General Power of Attorney in favour of one Shri Prakash Sharma with respect to his 1/6th share in the land in question. Respondent No. 4 Badlu also executed General Power of Attorney on 06.09.1994 with respect to his 1/6th share in the land in question. Pursuant thereto, Chatter along with Ram Chander and Badlu executed a joint sale deed dated 29.09.1995 transferring their respective shares in the land in question. Strong reliance has been placed on a recital in the Sale deed that the land stood mutated in the name of the vendors i.e., Chatter, Ram Chander and Badlu in the revenue records. Thus, it is sought to be contended by the appellants that it is manifest from the aforesaid documents that the respondents were aware of the mutation that was affected in the year 1966.

16. On a perusal of the said documents, it appears to us that the recitals therein may be of some assistance to substantiate the plea that the appellant (Chatter) had succeeded to the share of Smt. Sara in the land in question. However, there is absolutely no material to show that the respondent Nos. 3 and 4 were aware of the mutation that was affected in the revenue records in the year 1966. The recital in the joint sale deed dated 29.09.1995 according to us cannot be taken as basis to attribute knowledge to the respondent Nos. 3 and 4 since the said sale deed was not signed by the vendors themselves, but on their behalf the documents were executed by General Power of Attorney holder- Prakash Sharma. Similarly, the fact that in the General Power of Attorney dated 09.12.1993 executed by Sh.Ram Chander and the General Power of Attorney dated 06.04.1994 executed by Shri Badlu in favour of Shri Prakash Sharma there was a reference to 1/6th share only, does not establish the knowledge of mutation proceedings.

17. In the facts and circumstances it appears to us that the date of knowledge of respondent Nos. 3 and 4 of the mutation order dated 10.12.1966 being a

question of fact which is seriously in dispute cannot be determined merely on the basis of the copies of documents and affidavits of the parties. According to us, it is a question which needs consideration by the Collector (South West) who is the First Appellate Authority under the Delhi Land Revenue Act 1954.

18. Since, the Collector (South West) failed to make such determination before condoning the delay and deciding the appeal on merits, we hereby set aside the order of the Collector (South West) dated 30.07.1997 and the order of the Financial Commissioner dated 13.11.1997 and dispose of the writ petition with a direction to the Collector (South West) to inquire into the question as to the date of knowledge of the respondents of the mutation order dated 10.12.1966 and then pass an appropriate order in accordance with law as to the maintainability of the appeal.

19. The appeal is accordingly disposed of.

