(1976) 12 DEL CK 0019

In the Delhi High Court

Case No : Civil Miscellaneous (Main) Appeal No. 180 of 1975

Kewal Singh APPELLANT

Vs

K.N. Bose RESPONDENT

Date of Decision : 20-12-1976

Acts Referred:

Citation : (1977) RLR 137

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : O.P. Tyagi and Y.K. Sabharwal, for the Appellant;

Judgement

H.L. Anand, J.

(1) This petition under Article 227 of the Constitution of India is directed against an order of the Revenue Assistant, Shahdara, Delhi u/s 26 of the Delhi Land Revenue Act, 1954 (for short, the Revenue Act) deleting the entry regarding bhoomidhari rights in respect of the land in dispute made in favor of the petitioner and certain others even while holding that the provisions of the Delhi Land Reforms Act, 1954 (for short the Reforms Act) were inapplicable to the land in question by virtue of the same being evacuee property.

(2) Land in dispute initially belonged to certain Muslim owners and was declared as evacuee property on their migration to the territories now forming part of Pakistan. It was eventually vested in the Central Government under the provisions of Section 12 of the Displaced persons (Compensation & Rehabilitation) Act, 1954 and was allotted to one Smt. Devki Devi, one of the respondents in the present petition, and it was directed that the possession of the land be delivered to her. Certain persons, including the petitioners, sought to be recognised as tenants on the basis of an expired lease and for cancellation of allotment but their pleas failed and it was held that they were in unauthorized occupation of the property after the expiry of the lease in their favor. Thereupon they made an application before the Revenue Assistant u/s 5(c) read with

Section 13(1)(f) of the Reforms Act praying for the grant of bhoomidhari rights. The application was rejected by the Revenue Assistant. The matter was taken to the then Chief Commissioner, Delhi on a revision u/s 187 of the Reforms Act. Smt. Devki Devi was, however, not imp leaded. The plea of the petitioner and others prevailed with the Chief Commissioner who declared that that the petitioners had boomidhari rights in the land in dispute. Pursuant to this order the Revenue Assistant made the necessary .entries in the revenue records in favor of the petitioner and certain others. In 1964 a suit was filed u/s 84 of the Reforms Act to eject Sm. Devki Devi on the ground that the petitioner and others were the bhoomidhars. The suit was resisted by Smt. Devki Devi and it was pleaded that she was not bound by the order made by the Chief Commissioner in proceedings in which she was not made a party. As the question of title was. involved in the suit the Revenue Assistant made a reference in 1966 u/s 186 of the Reforms Act and referred the question whether the petitioners and others were bhoomidhars to a civil court for decision. The reference was answered against the petitioners on the basis of which the Revenue Assistant declared that the petitioner and others were not the bhoomidhars and that Smt. Devki Devi was the owner. The suit was accordingly dismissed. The judgment and decree of the Revenue Assistant was upheld in appeal by the District Judge, Delhi. The revision to this Court against the judgment of the District Judge, Delhi, was dismissed in 1974. Soon after the decision of this Court Smt. Devki Devi moved the Revenue Assistant u/s 26 of the Revenue Act to delete the entry regarding bhoomidhari rights made in favor of the petitioners and others pursuant to the order of the Chief Commissioner. It was further prayed that an entry with regard to bhoomidhari rights be also made in favor of Smt. Devki Devi. By an order of April 28, 1974, now sought to be assailed, the Revenue Assistant accepted the first plea and, Therefore, directed the deletion of the entry regarding bhoomdhari rights made in favor of the petitioners and certain others but declined the second plea to enter the name of Smt Devki Devi as a bhoomidhar on the ground that the provisions of the Reforms Act were not applicable to the land in dispute by virtue of the fact that it was evacuee property.

(3) On behalf of the petitioners two contentions were raised. In the first place, it was urged that the property being admittedly evacuee property the Revenue Assistant was not competent to delete the entry in exercise of power U/S 26 of the Revenue Act as the Act admittedly did not apply to the property in dispute. Secondly, it was urged that in any event the Revenue Assistant was not competent to make an order u/s 26 of that Act.

(4) The respondents were unable to contest the proposition that the Revenue Assistant was not competent to act u/s 26 of the Revenue Act. They were also unable to contest proposition that the Reforms Act laid no application to title land in dispute by virtue of the fact that the land was evacuee property. The impugned order of the Revenue Assistant was, however, sought to be justified on the ground that the Revenue Assistant was in any event competent to rectify the mistake in the revenue record by deleting the entry regarding bhoomidhari rights

made in favor of the petitioners and others in view of the proceedings culminating in the judgment of this Court holding that the petitioners and others bad no bhoomidhari rights in the land in dispute. A strong plea was also raised for the petition being dismissed on the ground that, even though the petitioners had throughout been parties to the proceedings culminating in the judgment of this Court in revision, the petitioners were guilty of concealment of material fact in that the petitioner did not disclose in the petition that the petitioner''s claim to the tenancy rights laid been rejected by the authorises under the Administration of Evacuee Property Act and that the Revenue Assistant had held, on the basis of the finding of a civil court, that the petitioners and certain others had no tenancy rights and were in unauthorised occupation and that the decision had since been upheld not only by the District Judge, Delhi, but also by this Court in revision.

(5) After learning learned counsel for the parties it appears to me that while there is no doubt that the petitioners have been guilty of concealment of material facts from this Court in that no reference was made in the petition to the earlier proceedings to which the petitioners were admittedly parties in which the claim of the petitioners to being tenants and to consequential bhoomidhari rights had been fully adjudicated against the petitioners by courts of competent jurisdiction, it is not possible nevertheless to allow the impugned order ot'' the Revenue Assistant to stand because it is patently illegal and admittedly without jurisdiction. It is true that when a party approaches this Court invoking the extraordinary jurisdiction of this Court it would not be entitled to any relief if, inter alia, it makes a misrepresentation or conceals material facts from this Court. However, once this Court is seized of a matter under Article 227 of the Constitution of India and comes across an order made by a statutory body which is wholly without jurisdiction and, Therefore, patently illegal it is not possible for this Court to perpetuate such an illegality even though the proper course in such a case may perhaps give an undue advantage to a party who is not worthy of it or delay the grant of the much deserved relief to another.

(6) In the result, I would accept the petition even though reluctantly, set aside the impugned order of the Revenue Assistant and would direct that the appropriate authorities would forthwith take such steps as may be called for to give relief to Smt. Devki Devi respondent who has so long been denied the benefit of exclusive possession of the land in dispute even though it was allotted to her as far back as August, 1953.

